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RECORD, CASE No. 14,256.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 242.

HENRIETTA SNELL AND ALBERT J. STONE, ADMINISTRATORS OF THE ESTATE OF AMOS J. SNELL, DECEASED, ET AL., PLAINTIFFS IN ERROR,

vs.

THE CITY OF CHICAGO AND THE COMMISSIONER OF THE DEPARTMENT OF PUBLIC WORKS OF THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED OCTOBER 13, 1890.

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a UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you, in said court, between Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased; Henrietta Snell, widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and heirs-at-law of Amos J. Snell, deceased, appellants, and The City of Chicago and The Commissioner of the Department of Public Works of the City of Chicago, appellees, a manifest error hath happened, to the great damage of the said Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased; Henrietta Snell, widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and heirs-at-law of Amos J. Snell, appellants, as by their complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 23rd day of June, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 114th year.

WM. H. BRADLEY,
Clerk U. S. Circuit Court, Nor. Dist. Ill.

b [Endorsed:] Supreme Court of the United States. Henrietta Snell *et al.*, appellants, *vs.* The City of Chicago *et al.*, appellees. Writ of error. Copy deposited for the appellees in the clerk's office of the supreme court of the State of Illinois, at Ottawa, Illinois.

c In the Supreme Court of Illinois, Northern Grand Division.

HENRIETTA SNELL and ALBERT J. STONE, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased, *vs.* THE CITY OF CHICAGO and THE COMMISSIONER of the Department of Public Works of the City of Chicago.	Appeal from Superior Court, Cook —.

I, Alfred H. Taylor, clerk of said court, do hereby certify that on the seventh day of July, in the year 1890, a copy of the foregoing writ of error for the defendants in error was lodged in my office at Ottawa.

Witness my hand and the seal of this court this 10th day of July, A. D. 1890.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

A. H. TAYLOR,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To The City of Chicago and The Commissioner of the Department of Public Works of the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1890, pursuant to a writ of error, wherein you are defendants, filed in the clerk's office of the supreme court of Illinois for the northern grand division, and wherein Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, dec'd; Henrietta Snell, widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary J. Stone, children and heirs of said deceased, are plaintiffs, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. John M. Harlan, one of the justices of said court, this twenty-third day of June, in the year of our Lord one thousand eight hundred and ninety (1890).

JOHN M. HARLAN,
Justice Supreme Court of the U. S.

e [Endorsed:] Supreme Court of the United States. Henrietta Snell *et al.*, appellants, *vs.* The City of Chicago *et al.*, appellees. Citation to October term, 1890. True copies received and due service of the within citation is hereby accepted by the defendants in error therein named this 28th day of June, A. D. 1890. Jonas

Hutchinson, M. W. Robinson, counsel to the corporation, attorneys for The City of Chicago and The Commissioner of the Dep't of Public Works of said city, def'ts in error.

f In the Supreme Court of Illinois, Northern Grand Division.

HENRIETTA SNELL and ALBERT J. STONE, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased, *vs.* THE CITY OF CHICAGO and THE COMMISSIONER of the Department of Public Works of the City of Chicago.	Appeal from Superior Court, Cook —.

I, Alfred H. Taylor, clerk of said court, do hereby certify that on the seventh day of July, in the year 1890, a copy of the foregoing citation and return was lodged in my office at Ottawa.

Witness my hand and the seal of this court this 10th day of July, A. D. 1890.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

A. H. TAYLOR,
Clerk of Supreme Court.

g In the Supreme Court of Illinois, Northern Grand Division.

HENRIETTA SNELL, and ALBERT J. STONE, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased, *vs.* THE CITY OF CHICAGO and THE COMMISSIONER of the Department of Public Works of the City of Chicago.	Appeal from Superior Court, Cook —.

I, Alfred H. Taylor, clerk of the supreme court of Illinois for the northern grand division, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to one hundred forty-nine (149), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused

the seal of the said supreme court of Illinois to be hereunto affixed, at Ottawa, in said State, this tenth day of July, in the year of our Lord one thousand eight hundred and ninety.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

A. H. TAYLOR,
Clerk of Supreme Court.

1 STATE OF ILLINOIS:

Supreme Court, Northern Grand Division.

At a supreme court begun and held at Ottawa on Tuesday, the fourth day of March, in the year of our Lord one thousand eight hundred and ninety, within and for the northern grand division of the State of Illinois.

Present: Simeon P. Shope, chief justice; John Scholfield, justice; Alfred M. Craig, justice; Benj. D. Magruder, justice; Joseph M. Bailey, justice; David J. Baker, justice; Jacob B. Wilkin, justice; George Hunt, attorney general; Lawrence Morrissey, sheriff; Alfred H. Taylor, clerk.

Be it remembered that afterwards, to wit, on the 5th day of March, A. D. 1890, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the superior court of Cook county, Illinois; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, }
State of Illinois, County of Cook, } *ss.:*

Pleas before the Honorable Henry M. Shepard, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the third day, of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

Present: The Honorable Henry M. Shepard, judge of the superior court of Cook county; Joel M. Longenecker, State's attorney; Canute R. Matson, sheriff of Cook county.

Attest: PATRICK McGRATH, *Clerk.*

Be it remembered that heretofore, to wit, on the 21st day of December, in the year of our Lord one thousand eight hundred and eighty-eight, there were filed in the office of the clerk of the superior court of Cook county a certain bill of complaint and injunction bond, which are in words and figures as follows, to wit:

STATE OF ILLINOIS, }
Cook County, } ss:

To the honorable the judges of the superior court of Cook county and State of Illinois, in chancery sitting:

Complaining, show unto your honor- your orators, Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, and Henrietta Snell, widow of said deceased, in her own right, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and only heirs-at-law of said Amos J. Snell, deceased, that by the fourth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of an act of the General Assembly of the State of Illinois approved February 10, A. D. 1849, entitled "An act to incorporate the Chicago Southwestern Plank Company," it was enacted and provided as follows—that is to say:

SECTION 4. The capital stock of the said incorporation shall be two hundred and sixty thousand dollars, and shall be divided into shares of fifty dollars each.

SECTION 7. The said corporation is authorized and shall have power to erect and maintain such toll-houses, toll-gates and other buildings for the accommodation and management of said road and the travel and transport thereon as the said corporation may deem suitable to its interests and may demand, collect or receive of and from any and every person using said road or so much thereof as may be completed, toll to be regulated by the directors of said corporation but not to exceed the following rates per mile: For every man and horse, one cent per mile, for every carriage or wagon, drawn by one horse or other animal two cents per mile. For every carriage or wagon drawn by two horses or other animals, two
4 and a half cents per mile. For every carriage or wagon drawn by four horses or other animals three cents per mile. For each additional pair of horses or other animals, one-half cent per mile. For horses or mules in droves, three mills per head per mile. For cattle in droves, two mills per head per mile. For hogs, goats or sheep, one mill per head per mile.

SECTION 8. The said corporation shall cause to be kept upon each gate in some conspicuous place, a list of the tolls which may be lawfully demanded and shall cause mile posts to be erected and maintained on said road. Any toll-gatherer is authorized to stop and detain any person going on said road until the proper charges shall have been paid.

SECTION 9. If any toll-gatherer shall unreasonably hinder or delay any traveler or passenger, or shall demand more toll than by this act is allowed, the company shall forfeit and pay to the person injured the sum of fifty dollars if any person or persons shall wilfully cut down, break, deface or injure any mile post or posts on said road or shall wilfully cut down or throw down break or injure any gate erected on said road or wilfully tear up displace break or injure in any way the said road, or anything thereunto belonging, he shall forfeit and pay the said corporation three times the amount of

damages by him actually done, and in every instance he shall forfeit and pay at least the sum of twenty-five dollars. If any person to avoid the legal tolls chargeable on said road shall turn off said road and pass any gate on said road, and again enter upon said road he shall forfeit and pay to the said corporation the sum of ten dollars.

SECTION 10. The said corporation is hereby authorized to
5 locate and construct said plank road over any lands owned by this State on the route of said road and is authorized to acquire by voluntary cession or by purchase from the owners the right to construct said road over any lands belonging to individuals, companies or corporation on said route, and in case said corporation cannot obtain the right to construct over the land owned by individual, company, or corporation by voluntary cession or by purchase, it shall be lawful for said corporation to appropriate and use so much of said land as shall be necessary for the proper construction of said road in complying with the six following sections:

SECTION 11. The directors may present a petition to the judge of any court of record, erected in any county in which said lands lie, to which said corporation is unable to acquire title as aforesaid setting forth by some proper description the lands which are wanted for the construction of said road or the appendages thereto and the names of the owners thereof. If known, distinguishing with convenience, if it can be done, the parcels claimed in severalty by the respective owners and praying for the appointment of appraisers to assess the damages which the owners of such lands will severally sustain by reason of the appropriation thereof by the said corporation for the use aforesaid.

SECTION 12. On the presentment of said petition said judge shall appoint a day for the hearing of the parties in interest, and shall direct such notice as he shall deem reasonable to be given of the time and place of hearing and in case it shall appear that the owner of any lands is a femme covert an infant or insane, or otherwise incompetent to take proper care of his or her interests it shall be the duty of said judge to appoint some discreet and repu-
6 table person to act in the premises in her or his behalf.

SECTION 13. At the time appointed for such hearing, the said judge shall appoint three disinterested persons, freeholders, resident in the county in which said lands lie, for the purpose of assessing the damages, and in the order in which they were appointed shall direct and specify what lands are proposed to be appropriated and occupied by said corporation for the purpose aforesaid.

SECTION 14. Said appraisers after being duly sworn before some officer authorized to administer oaths, honestly and impartially to assess such damages, shall proceed by viewing said lands and by such other evidence as the parties may produce before them to ascertain and assess the damages which owner will sustain by the appropriation of his or her lands for the use or accommodation of said plank road or its appendages.

SECTION 15. The said appraisers shall make report to said judge in writing under their hands, reciting the order of their appoint-

ments, and specifying the several parcels of land described therein, with all necessary certainty, the name of the owners of the respective parcels, if known, and if not known, stating the fact, and specifying also the damages which the owners of the respective parcels will sustain by reason of the appropriation of the same for the purposes aforesaid; and in case either of the parties are dissatisfied with the assessment the said judge may, on the hearing of the parties in interest modify the assessment as to him shall appear just.

SECTION 16. On the payment of the damages thus assessed together with the expenses of the assessment as the same shall
7 be settled by said judge or on depositing the amount thereof for the use of such owners in such place as the said judge shall direct, the said corporation shall immediately become entitled to the use of said lands for the purpose aforesaid and the report of the said appraisers, with the order of said judge modifying the same, if the same shall have been modified, shall be recorded in the office of the recorder of the county in which said lands shall be situated in the same manner, and with the like effect as deeds are recorded; without any other proof than the certificate of the said judge, that the report is genuine, and when said report and order shall have been recorded as aforesaid, the said corporation shall be seized and possessed of said lands or real estate, and may enter upon and take such possession and use the same for the purposes hereinafter recited; provided that said road shall not be run through any door yard or orchard, or so as to disturb any building without the consent of the owner or owners thereof.

SECTION 17. The said corporation, for the convenience of travel, may construct and establish lateral branches of the said plank road, in the discretion of said corporation, upon the said plan with the main road, and to the construction, establishment and maintenance of said branches, and the gates and tolls thereon, all the provisions of this act shall fully apply.

SECTION 18. The said corporation, in and about the prosecution of the said road, and to aid it therein, may borrow money and contract to pay therefor a rate of interest not to exceed twelve per cent. Should the directors of said corporation consider it necessary they may provide and set apart a certain per cent. of the net
8 profits of said road and branches, as a special fund for the prosecution, repair and renewal of the said road without the same be decided by the stockholders in a general meeting; the said special fund so set apart may be loaned from time to time by the directors of said company upon good and sufficient security, they making such loans upon such time that the money loaned may be re-collected whenever needed for the purposes of renewing said road.

SECTION 19. This act is hereby declared a public act; and shall have effect from and after its passage. That by the twenty-first, twenty-second and twenty-third sections of an act of the General Assemby of the State of Illinois, approved February 12, A. D. 1849, entitled "An act to construct a plank road from Oswego, in Kendall county, to the Indiana State line by way of Joliet in Will county, it was enacted and provided as follows, that is to say:

SECTION 21. That John Gray, Joseph Filkins, Thomas Richmond and their associates, to whom was granted by the county commissioners' court of Cook county, a license to construct a plank road from the city of Chicago to Oak Ridge, and from thence to Wheeling and to the north line of said county, be, and they are hereby constituted a body corporate and politic, under the name and style of "The Northwestern Plank Road Company," and by that name, shall have perpetual succession, the right to sue and to be sued, together with all rights and ordinary powers of a corporate body.

SECTION 22. That the said Northwestern Plank Road Company shall have, possess and enjoy and be subject to all the powers and privileges, rights and duties contained in sections 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, of the act passed at the present session of the General Assembly entitled "An act to incorporate the Chicago Southwestern Plank Road Company," and in addition thereto shall have the right to take and use for the purposes of constructing said road, any road or public highway along the line of the contemplated plank road upon obtaining the order of the county commissioners' court of said county, to be entered of record consenting to the appropriation of such road or highway, which said order shall be made by said court upon the petition of three-fourths of the owners of the land lying along or contiguous to said highway, which order when obtained, in the manner aforesaid, shall vest the right to use said highway for the purposes of said plank road, as fully and completely as though said corporation had obtained the same by grant.

SECTION 23. This act shall take effect from and after its passage.

Your orators further represent that by a subsequent act of the General Assembly of the State of Illinois, approved March 1, A. D. 1854, entitled "An act to incorporate the Northwestern Plank Road Company," the said Northwestern Plank Road Company was duly incorporated and chartered, which act recites and provides and is to the effect and was and is in the words and figures following—that is to say, an act to incorporate the Northwestern Plank Road Company:

Whereas an act was passed by the legislature of the State of Illinois, approved February 12th, 1849, entitled An act to construct a plank road from Oswego, in Kendall county, to the Indiana line, by way of Joliet, in Will county; and whereas the 21st, 22d and 23rd sections of said act constituted John Gray, Joseph Filkins, Thomas Richmond and their associates, a body politic and corporate under the name and style of the Northwestern Plank Road Company; and whereas doubts exist whether this is in accordance with the constitution of this State, inasmuch as the title of the act to which this is a part, does not set forth this part of the act, nor the title of the company which it authorized, under the name and style of the Northwestern Plank Road Company. Therefore,

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That John Gray, Joseph Fil-

kins, Thomas Richmond, and their associates, to whom was granted by the county commissioners' court of Cook county, a license to construct a plank road from the city of Chicago to Oak Ridge, and from thence to Wheeling, and to the north line of said county, be, and they are hereby constituted a body corporate and politic, under the name and style of the Northwestern Plank Road Company, and by that name shall have perpetual succession, and the right to sue and be sued, together with all other rights, and ordinary powers of a corporate body.

SECTION 2. That the Northwestern Plank Road Company, shall have, possess and enjoy, and be subject to all the powers, privileges, rights and duties contained in sections four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen of the act passed at the session of the General Assembly, approved February 12th 1849, entitled An act to incorporate the Chicago Southwestern Plank Road Company; and in addition thereto, shall have the right to take and use for the purpose of constructing said road, any road or public highway along the line of the contemplated plank road, upon obtaining the order of the county commissioners' court of said county, to be
11 entered of record, consenting to the appropriation of such road, or highway, which said order shall be made by said court upon the petition of three-fourths of the owners of the land lying along, or contiguous to said highway, which order when obtained in the manner aforesaid, shall vest the right to use said highway for the purposes of said plank road, as fully and completely as though said corporation had obtained the same by grant.

SECTION 3. That whereas, the corporators heretofore named, did organize and proceed to prosecute the construction of such road under the powers referred to, all the acts of said corporators done in accordance with the rights and provisions therein contained, in good faith, are hereby legalized and made valid, the same as if no defect in the title of the original act had existed. This act shall take effect from the date of its passage.

That by virtue of said last-mentioned enactment the said sections 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, of the said act of the General Assembly of the State of Illinois, approved February 12th, 1849, entitled "An act to incorporate the Chicago Southwestern Plank Road Company," hereinbefore set forth, were made and thereby by reference became a part of said act to incorporate the said Northwestern Plank Road Company.

That under and by virtue of the said acts for its incorporation the said Northwestern Plank Road Company became and was duly incorporated and organized as a corporation and proceeded to and did prosecute and complete the construction of such road under the powers and franchise which were as aforesaid conferred on said The Northwestern Plank Road Company as embraced in its charter.

That the plank road of said The Northwestern Plank Road
12 Company, so as aforesaid by it constructed and completed,

included the plank road, with the liberties, privileges, and franchises thereunto belonging and appertaining, which thereafter was purchased by said Amos J. Snell, as hereinafter fully stated.

And your orators further represent unto your honors that under and by virtue of the premises John Gray, Joseph Filkins, and Thomas Richmond and their associates were constituted as a body politic and corporate under the name and style of the "Northwestern Plank Road Company," with power to make, construct, take, and use any public highway and possess, own, and operate the same as a toll-road; that said corporation, in pursuance of the terms of its charter in said acts contained, became and was entitled to the possession of the said Milwaukee avenue, by the said corporation to be used as a toll-road, and to maintain the same as a toll-road and to erect, operate, and maintain such toll-gates, toll-houses, and other buildings for the accommodation and management of said road and the travel and transport thereon as the said corporation should deem suitable to its interests, and to erect, operate, and maintain toll-gates, toll-houses, and other buildings along and upon said Milwaukee avenue; all which said avenue, from the intersection therewith of North avenue northwesterly to the village of Jefferson, in said county, was and is a part of said toll-road established as aforesaid under said enactments comprising the charter of said corporation.

Your orators further represent that all acts and things were done and performed as required by said charter in said acts contained, and that by virtue thereof said corporation more than twenty years last past became and was in possession of said Mil-
13 waukee avenue at and from a point therein at the said intersection therewith of North avenue, now within the limits of the city of Chicago, in said county, but which said North avenue was then the northern limit of said city of Chicago, to a point on the said Milwaukee avenue six miles or thereabouts northwest from said intersection, and that at said time, and more than twenty years ago, the said corporation, by virtue of its charter in said acts contained and by virtue of the said acts and things so as aforesaid done and performed by it thereunder, became possessed of and had authority and power to erect and maintain such toll-houses and toll-gates and other buildings for the accommodation and management of the said toll-road and the travel and transportation thereon as the said corporation might deem suitable to its interests, and that it had the right to demand, collect, and receive the tolls for the use of the said road according to the schedule of tolls therefor prescribed in its said charter and its amendment, as herein mentioned, and that in accordance with such rights and privileges so granted by said charter said corporation took possession of and constructed said toll-road and erected toll-gates, toll-houses, and other buildings which it deemed suitable to its interests as aforesaid along said road, to wit, the same toll-road, toll-gates, and toll-houses mentioned as aforesaid, and from then until the purchase thereof by the said Amos J. Snell, as herein stated, continued to maintain said toll-road, toll-gates, and

toll-houses and to collect toll therefor and thereat from all such persons as used the said road, as the same lawfully might do by virtue of the premises.

Your orators further represent that by an act of the General Assembly of the State of Illinois, approved February 15th, 1865, entitled "An act to amend the charter of the Northwestern Plank Road Company, in the county of Cook, and to authorize the sale of the franchise," it was enacted and provided as follows—that is to say:

An act to amend the charter of the Northwestern Plank Road Company, in the county of Cook, and to authorize the sale of the franchise.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the Northwestern Plank Road Company, be authorized to substitute stone or gravel in place of plank, upon said road or any part thereof, provided, the same shall be of equal width of the plank track, and be constructed so as to pass the examination of the inspectors of plank roads in said county.

SECTION TWO. The said company may collect the same tolls and enjoy the same privileges, granted to plank-road companies by the general plank-road law, and it may collect the same penalties, fines and damages for any violation of its rights, or damage to its property that is authorized by said general law, and be subject to the same penalties that law imposes for the abuse of travelers, or the community.

SECTION 3. The president, by the advice and direction of a majority of the stockholders, may sell to the county of Cook the franchise, the property and immunities of said company, or to any other party or parties, and thus dissolve said company, and divide the avails among the stockholders.

SECTION 4. And be it further enacted, That the board of supervisors of Cook county, may purchase said franchise, property and immunities, and upon the order of said board, the clerk of said county, shall proceed to purchase and receive the deed of title to the same, and should said county fail to purchase the same, any person or persons may purchase the same, and thereby make the same private property.

SECTION 5. The deed of the president of said company to the said county of Cook, or to any other party purchasing, shall be a good and lawful title to the same; provided always, that all the debts and liabilities of said company shall be paid; provided further, that the purchaser or purchasers of said franchise and road, shall be bound by all the obligations said Northwestern Plank Road Company is by its charter, and shall enjoy all the rights and privileges, enjoyed by said company, and no more.

Your orators further represent unto your honors that said corporation duly accepted said amendment of its charter, and, under and by virtue of the said last-mentioned enactment, the said corporation—that is to say, the said Northwestern Plank Road Company—

became possessed of the said additional privileges therein mentioned and conferred, together with the right and power to sell all of its right and title in and to said road, the franchises, the property and immunities of said company.

That in accordance with and pursuance of said act he, the said Amos J. Snell, in his lifetime, on the 5th day of August, A. D. 1870, did purchase of and from the said corporation all of its rights and title in and to said road, the franchise, the property and immunities of said company, and that Thomas Richmond, who was then and there the president of the said company, by the advice and direction of a majority of the stockholders of said corporation,
16 as in the said last-mentioned act provided, as such president, did then and there sell and convey to the said Amos J. Snell the said road, the franchise, the property and immunities of said company for the consideration of twenty thousand dollars ($20,000), which the said Amos J. Snell then and there paid to the said president and to said corporation, and the said president, pursuant thereto, then and there executed, acknowledged, and delivered to the said Amos J. Snell a deed thereof, in due form, in the words and figures following—that is to say:

Whereas the Northwestern Plank Road Company was made a corporation by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Northwestern Plank Road Company," approved March 1, 1854;

And whereas an act to amend the charter of the Northwestern Plank Road Company, in the county of Cook, and to authorize the sale of the franchise was passed by the legislature of the State of Illinois, approved February 15th, 1865, containing the following clause as section 3rd, substantially:

Section 3rd. The president, by the advice and direction of a majority of the stockholders, may sell to the county of Cook the franchise, the property, and immunities of said company or to any other party or parties and thus dissolve said company and divide the avails amongst the stockholders;

Section 5, substantially thus:

The deed of the president of said company to the county of Cook or to any other party purchasing the same shall be a good and lawful title to the same, provided, always, that all the debts and liabilities of said company shall be paid; provided, further,
17 that the purchaser or purchasers of said franchise and road shall be bound by all the obligations said Northwestern Plank Road Company is, by its charter to keep and perform, and shall enjoy all the rights and privileges enjoyed by said company and no more;

And whereas, at a meeting of the stockholders, held at the president's room, 469 West Lake street, on the 5th day of January, 1866, and five thousand one hundred and twenty shares (5,120) were represented, being all but eighty (80) shares, the following resolution was passed:

Resolved by the stockholders of this company, That Thomas

Richmond, president, be authorized to sell the plank road, toll-houses, and other property belonging to the company, with the franchise and all its rights and privileges, and give a deed of the same to the purchaser for such sum and upon such conditions as he shall deem advisable:

And whereas the said plank road company is entirely free from debt, now, therefore, I, Thomas Richmond, president of the Northwestern Plank Road Company, for and in consideration of the sum of twenty thousand dollars ($20,000) to me in hand paid by Amos J. Snell, of Jefferson, in the county of Cook and State of Illinois, do hereby sell, transfer, convey, and set over to the said Amos J. Snell, his heirs, executors, administrators, and assigns, "all the property of said company, consisting of the charter and its amendments and franchises, the right of way, the grading, the planking, ditches, bridges, and drainages, the toll-houses, gates, teams, implements of work, and being the plank from the old city limits of Chicago aforesaid to the nine-mile post, together with all the property, goods, and chattels of said company of whatsoever nature or description:"

18 To have and to hold unto the said Amos J. Snell, his heirs, executors, administrators, and assigns, forever.

In witness whereof the said Thomas Richmond, as president, has hereunto signed his name and affixed the seal of the said Northwestern Plank Road Company this fifth day of August, A. D. 1870.

[Corporate Seal of the Northw. P. R. R. Co.]

THOMAS RICHMOND,
Pres't N. W. P. R. R. Co.

STATE OF ILLINOIS, } ss.
Cook County, City of Chicago, }

I, Nathan M. Freer, a notary public in and for the city of Chicago, in the county of Cook and State of Illinois, do hereby certify that Thomas Richmond, president of the Northwestern Plank Road Company, who is personally known to me as the person whose name is subscribed to the within deed as having executed the same, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all his right, title, and interest in and to the premises described in said deed.

Given under my hand and notarial seal this — day of August, A. D. 1870.

[NOTARIAL SEAL.] (Signed) NATHAN M. FREER,
Notary Public, City of Chicago.

19 Your orators further represent that said deed was duly filed for record in the recorder's office of said Cook county on the 6th day of August, A. D. 1870, and therein duly recorded in Book 592 of Deeds, at page 381, as by the said deed, ready to be produced, will appear.

Your orators further represent that by virtue of the premises and under the deed and grant aforesaid the said Amos J. Snell was and continued from the time of such conveyance, until his death the absolute and exclusive owner of the said property in the said deed mentioned, including the said charter and its amendments, the said franchise, the right of way, the grading, planking, ditches, bridges, and drainages, toll-houses, toll-gates, and so forth, being the road and property in said deed mentioned, and that ever since his said purchase of said plank-road property and franchise the said Amos J. Snell, until his death, as herein mentioned, was the sole owner thereof, in the actual and exclusive possession, control, and enjoyment thereof, and the undisturbed exercise of all the franchise, rights, and powers which were conferred upon said corporation by said enactments.

And your orators further represent that by virtue of the premises and said purchase by said Amos J. Snell from said corporation, the said Northwestern Plank Road Company, and the said deed to him by said corporation he, the said Amos J. Snell, acquired, had, and possessed the franchise, powers, and privileges of said corporation under its said charter to erect, operate, and maintain all such toll-gates, toll-houses, and other buildings for the accommodation and management of said toll-road and the travel and transport thereon as he should deem suitable to his interests.

Your orators further represent that the said Amos J. Snell
20 in his lifetime and several years prior to his death and long prior to the extension of the limits of the city of Chicago west of or beyond Western avenue, so as to embrace any portion of said Milwaukee avenue lying or extending westwardly therefrom, and prior to the time when the limits of said city of Chicago were extended to embrace or did embrace that portion of the northwest quarter of section thirty-six (36), in township forty (40) north, of range thirteen (13) east, of the third (3rd) principal meridian, in said county, occupied or traversed by said Milwaukee avenue—that is to say, said toll-road being the portion of said Milwaukee avenue lying between Fullerton avenue and California avenue—for the accommodation and management of said toll-road and the travel and transport thereon and which he deemed suitable to his interests as the owner of said road, franchise, powers, and immunities as aforesaid, erected a toll-gate and toll-house on said toll-road at the intersection of said Milwaukee avenue, being said toll-road as aforesaid, with said Fullerton avenue, which said toll-house *which* the defendants hereinafter named have designated and so designate as the toll-office of Mr. Snell, located on the southeast corner of Milwaukee avenue and Fullerton avenue, also as the toll-gate building on Milwaukee avenue south of Fullerton avenue, and that said Amos J. Snell, from and after the erection of said gate and building as aforesaid, for and during the period up to his death, operated and maintained said toll-gate and toll-house, as he lawfully might, by virtue of the premises, for the accommodation and management of said toll-road and the travel and transport thereon as aforesaid, which

erection, maintaining, and operating of said gate and toll-
21 house *was* deemed by said Amos J. Snell suitable to his interests, and which were and have been suitable and necessary for his interests in the management of said road; that without the said gate and toll-house large sums of money would have been lost to the said Snell, by reason of the fact that large numbers of persons traveling upon said toll-road could and would shun and avoid all other toll-gates upon said road by passing thereon and therefrom by way of said Fullerton avenue in passing to and from the city of Chicago; that in order to secure tolls for the use of said road to which he was during all that time entitled he, the said Amos J. Snell, erected, maintained, and operated the said toll-gate and toll-house at the said intersection of said toll-road with said Fullerton avenue as aforesaid, as he lawfully might do as aforesaid.

That for the purpose of a more definite understanding of the location of said toll-gate and toll-house or toll-office your orators attach hereto as a part of this bill a plat or map, on which is indicated the location of the same, marked "A."

That ever since the death of said Amos J. Snell, as hereinafter stated, the complainants, as the legal and personal representatives of said Amos J. Snell, have maintained and operated and still maintain and operate the said toll-gate and toll-house for the purpose of collecting tolls thereat, payable by all persons passing over said portion of said toll-road, as your orators, as they are advised and believe, lawfully might and may do by reason of the premises; and your orators aver and charge that if the threat and purpose of the defendants, as hereinafter stated and mentioned, to remove said
toll-gate and toll-house or toll gate building, as the defend-
22 ants designate the same as aforesaid, shall be carried out and performed, as your orators verily believe they intend to and will do unless enjoined from so doing by the injunction of this court, will cause your orators to be subjected to great loss and irreparable injury, and they will be subjected to a multiplicity of suits against all such persons as should thereby be enabled to and would travel upon and over that portion of said toll-road lying and being between said Fullerton avenue and the easterly terminus of said toll-road, at the intersection of said Milwaukee avenue and North avenue, now within the present limits of said city of Chicago, without being compelled to pay to the complainants the usual tolls therefor on account of such removal of said toll-gate and toll-house if the defendants are not prohibited and enjoined from carrying out their said threat and purpose, and they would also be subjected to the necessity of instituting a multiplicity of suits against the defendants herein for causing loss to the complainants of such tolls as the complainants would be entitled to collect, and which the complainants could not otherwise collect by reason of such wrongful removal of said toll-gate and toll-house or toll-gate building by the defendants.

Your orators further represent that on or about the eighth day of February, A. D. 1888, the said Amos J. Snell, then being a resident of the said city of Chicago, in said Cook county, and a citizen

of this State, died intestate, leaving him surviving your orator herein, Henrietta Snell, as his widow, and the complainants Albert J. Snell, Grace S. Coffin, Mary Stone, and Alice E. McCrea his only children and only heirs at law, who thereupon became by the laws of this State regulating the descent of the intestate estates the owners, subject only to his debts, of all the property of which the said Amos J. Snell was the owner at his decease and died seized and possessed, including the said toll-road, toll-gates, and toll-houses and the property and franchise so as aforesaid purchased by said Amos J. Snell and conveyed to him by said deed; that afterwards, on the 16th day of February, A. D. 1888, the probate court of said Cook county duly appointed the complainants Henrietta Snell and Albert J. Stone administrators of the estate of the intestate according to law, and they are now the duly qualified and acting administrators of said estate, and as such have taken and are in possession of all the personal estate of said decedent.

That the said corporation, the Northwestern Plank Road Company, up to the said purchase by and conveyance to said Amos J. Snell, and he from thence until his death, and the complainants from thence hitherto, have fully kept and performed all the requirements and conditions by the said corporation on its part and the said Amos J. Snell on his part and the complainants on their part to be kept and performed, in order to entitle the said corporation, the said Amos J. Snell as such purchaser and owner, and the complainants as his legal and personal representatives as aforesaid to the privileges and franchise granted and secured to it and to him by said charter of incorporation and its amendments.

Your orators further represent that the rights of the said corporation, the said Northwestern Plank Road Company, under and by virtue of its said charter, pursuant to said several enactments in respect to the said original and also to all the franchise, privilege, and power to own, operate, and maintain such toll-gates, toll-houses, and other buildings on and along the line of said road as the said corporation should deem suitable to its interests, and the superintendence and management of said toll-road and the tolls and revenues thereof, had been acquired by and become vested in said corporation, by reason of the premises, many years before the municipal authorities and government of the city of Chicago aforesaid acquired or exercised any jurisdiction, power, or authority whatever over or concerning any of the territory through and over which the said toll-road passes, and that likewise the said Amos J. Snell, upon and after his said purchase and conveyance from said corporation, succeeded to, possessed, and had all the said franchise, privileges, and power of the said corporation and which had been acquired by and become vested in said corporation, and that thereupon and by virtue of said purchase and conveyance the same became and were vested rights in the said Amos J. Snell, and this while the territory traversed by all of said toll-road lying west of said Western avenue and every part of it was not embraced within the territorial limits of said city of Chicago nor subject to

any control nor under the jurisdiction of the municipal authorities or government of said city; and your orators aver and charge that the said erection, operating, and maintaining of said toll-gate and toll-house so as aforesaid designated by the defendants as the toll-gate building on Milwaukee avenue south of Fullerton avenue by the said Amos J. Snell and the operating and maintaining thereof by the complainants since his death were and have been strictly in the exercise of the rights in that behalf conferred upon and vested in said Amos J. Snell by virtue of the premises and the complainants as his legal and personal representatives as aforesaid, and the same are not now and never have
25 been subject to any control by or interference on the part of the said city of Chicago or any of its officers, agents, or servants; and they further charge that the threatened removal of said toll-gate and toll-house designated by the defendants as aforesaid as the toll-gate building by the defendants, as hereinafter stated, is usurpation and in direct violation and disregard of the said vested rights so acquired by the said corporation and which became vested in the said Amos J. Snell and belong to and are vested in your orators as his legal and personal representatives as aforesaid, of all which the defendants had notice; and the complainants further charge that if it be true that the territorial or corporate limits of the city of Chicago have been extended westwardly from said Western avenue to embrace and include the territory through or over which passes the portion of Milwaukee avenue which constitutes that part of said toll-road lying and being east or southeasterly from said Fullerton avenue such extension of the territorial or corporate limits of the city and the municipal authority over such extended limits has not, would not, and cannot abridge, affect, or impair any right, privilege, power, or franchise which said corporation, the said Northwestern Plank Road Company, acquired as aforesaid, and which were succeeded to by said Amos J. Snell under and by virtue of said purchase and deed and by your orators as his legal and personal representatives as aforesaid nor confer upon said city or any of its officers, agents, or servants the right or power to remove the said gate and toll-house or any toll-gate, toll-house, or other building which had been so as aforesaid erected, operated, and maintained for the accommodation and man-
26 agement of said toll-road and the travel and transport thereon prior to any extension of the limits of said city to include the same.

Nevertheless, as your orators represent and show, that at a meeting of the common council of said city on the tenth day of December, A. D. 1888, upon the petition of nine alleged citizens and tax-payers of the said city of Chicago, dated November 28, 1888, a certified copy of which is hereto annexed, marked Exhibit "B," as part of this bill, by a vote of said council, of which the complainants had no previous notice, *but* as your orators have since learned and ascertained, an order was made by the said common council that the commissioner of public works—that is to say, the commissioner of public works of said city —— be,

and he was thereby, directed to remove said office—that is to say, the toll-office which had been so as aforesaid erected, operated, and maintained by the said Amos J. Snell and still there standing and ever since his death as aforesaid maintained and operated by your orators as aforesaid for the purposes in that behalf hereinbefore mentioned—the same being designated in the record or report of said council proceedings for December 10, A. D. 1888, as the toll-office of Mr. Snell, as shown on pages 615 and 616, current volume of the official printed report of the proceedings of said council, a copy of which record or report for said December, A. D. 1888, is hereto annexed as part of this bill, marked "Exhibit C," and your orators further annex hereto a certified copy of said order, marked "Exhibit D," as part of this bill. Your orators further represent that afterwards, on or about the fifteenth day of December, A. D. 1888, George B. Swift, commissioner of the department of public works of said city, caused to be served
27 upon the complainants Albert J. Snell and Albert J. Stone respectively notices in the words and figures following:

"*Notice to Remove Obstructions.*

OFFICE OF THE DEPARTMENT OF PUBLIC WORKS,
CHICAGO, *Dec. 15th*, 1888.

To A. J. Snell, Jr.:

You are hereby required to remove the toll-gate building on Milwaukee Ave., south of Fullerton Ave., within the space of five (5) days from the date hereof, and this you will in nowise omit under penalty.

In violation of section 1996 of the municipal code of the city of Chicago.

GEO. B. SWIFT,
Commissioner of the Dep't of Public Works.

A. N. LANGE,
Special Policeman."

"*Notice to Remove Obstructions.*

OFFICE OF THE DEPARTMENT OF PUBLIC WORKS,
CHICAGO, *Dec. 15th*, 1888.

To A. J. Stone:

You are hereby required to remove the toll-gate building on Milwaukee Ave., south of Fullerton Ave., within the space of five (5) days from the date hereof, and this you will in nowise omit under penalty.

In violation of section 1996 of the municipal code of the city of Chicago.

GEO. B. SWIFT,
Commissioner of the Dep't of Public Works.

A. N. LANGE,
Special Policeman."

for the notification of the complainants of the purpose and intention of said city of Chicago and the said George B. Swift, commissioner of the department of public works as aforesaid, of removing or causing to be removed from the said place where the same is and has been for many years used as aforesaid the said toll-gate
28 building mentioned in said notice, the same being the said toll-gate and toll-house at the intersection of said Milwaukee avenue and Fullerton avenue, it being falsely pretended and claimed by the said George B. Swift, commissioner as aforesaid, as set forth in said notice, that said toll-gate building on Milwaukee avenue, south of Fullerton avenue, erected, maintained, and operated as aforesaid, is in violation of section 1996 of the municipal code of the city of Chicago, which section is as follows:

"1996. The owner of any building, fence, porch, steps, gallery, or other obstruction, now standing, or which may hereafter be erected, or placed upon any street, alley or sidewalk, or public ground within this city, or which may be left standing upon any new street that has been, or may hereafter be opened, shall remove the same within such reasonable time, not exceeding thirty, nor less than three days, as he shall be required so to do, by a notice signed by the commissioner of public works, under a penalty of not less than twenty-five dollars, nor more than one hundred dollars, and a further penalty of ten dollars for every day the same shall so remain."

On the contrary, your orators represent that said toll-gate building is located for the proper accommodation and management of said toll-road and the travel and transport thereon as aforesaid, and that the same does not in any just sense or in any manner come within the meaning or operation of said section 1996 of the municipal code of the city of Chicago.

Your orators further charge that the city of Chicago and the said George B. Swift, commissioner of public works, threaten and intend to remove or cause to be removed the said toll-gate building,
29 and that they will speedily do so unless restrained and enjoined by the order and injunction of this honorable court from so doing, and that if they shall be permitted to consummate and carry out the said threatening and purpose and remove said toll-gate and toll-house, so as aforesaid designated by the defendants as the toll-gate building on Milwaukee avenue, south of Fullerton avenue, it would work great and irreparable damage to your orators and they will be subjected to the necessity of instituting at great expense and outlay of money a multiplicity of suits at law for the enforcement of their rights in the premises, all of which would be contrary to equity and good conscience.

Your orators further represent that the said Northwestern Plank Road Company until said purchase and conveyance from it to said Amos J. Snell as aforesaid and the said Amos J. Snell from and after his said purchase until his death as aforesaid and the complainants, as his legal and personal representatives, from thence hitherto have collected and complainants, as they lawfully might and may do, continue to collect tolls as allowed by law for the travel

and transport of all such persons as pass to and fro over and along said toll-road, including that portion thereof which traverses territory now lying within the corporate limits of said city of Chicago, and the complainants further charge that all extensions of the corporate limits of said city to include territory traversed by said toll-road were made subsequent to the conferring of the right to collect tolls thereon as aforesaid under and by virtue of said enactments, and that no subsequent extension of the corporate limits of said city could in any manner or to any extent abridge, affect, or im-
30 pair the then existing right of the owners or owner of said toll-road and of the franchise belonging or pertaining thereto to the free and undisturbed collection of such tolls or the maintaining and operating of said toll-gates, toll-houses, and other buildings as aforesaid for the accommodation and management of said toll-road, including said toll-gate building which the defendants so as aforesaid wrongfully threaten to remove as aforesaid.

And your orators further charge that the said threatened removal of said toll-gate building would, if permitted to be done, interfere with and prevent your orators from collecting any of the tolls upon said toll-road for the portion thereof now lying between the intersection thereof with said Fullerton avenue and the eastern terminus of said toll-road at North avenue as aforesaid (which in the aggregate amount to a considerable sum and revenue for your orators) from all persons passing to and from said toll-road by way of said Fullerton avenue, who would otherwise be required to pay the tolls collectable as the same heretofore have been and are now at the said toll-gate building so located at said intersection, and which the defendants threaten to remove as aforesaid, which would cause your orators great and irreparable damage and loss.

Forasmuch, therefore, as your orators are without remedy in the premises, except in a court of equity where matters of this nature are properly cognizable and relievable, your orators pray that the said city of Chicago and George B. Swift, commissioner of the department of public works of the city of Chicago, be made defendants to this your orators' bill of complaint, and that they be severally required to make full and direct answer to the same, but not
31 under oath, the answer under oath being hereby waived, and that the defendants and each of them, their officers, agents, and servants, respectively may be restrained and prohibited by the injunction of this honorable court from removing or attempting to remove the said toll-gate and toll-house designated as aforesaid in said notices as the toll-gate building on Milwaukee avenue, south of Fullerton avenue, and from in any manner interfering or attempting to interfere with the use thereof for the collection of tolls thereat by the complainants as aforesaid, and that upon the hearing of this cause such injunction may be made perpetual, and that your orators may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

May it please your honors to grant the writ of summons in chancery, directed to the sheriff of the county of Cook aforesaid, against the said defendants, requiring them to appear at the next

term of this court and answer this bill as aforesaid, according to law and the practice of this court.

And may it please your honors to grant unto your orators the people's writ of injunction, to be directed to the said city of Chicago and the said George B. Swift, commissioner of the department of public works of the city of Chicago, restraining them and each of them, their officers, agents, and servants, and every of them as aforesaid, until the further order of said court.

And your orators further represent that the rights of the complainants will be unduly prejudiced if the injunction above prayed for is not issued immediately and without notice to the defendants or either of them.

FRANK J. CRAWFORD,
Solicitor for Complainants.

32 STATE OF ILLINOIS, } ss:
Cook County, }

Albert J. Stone, being duly sworn, on oath states he is one of the complainants in the foregoing bill named, and has heard the same read and knows the contents thereof; that the matters and things in said bill contained are true of his own knowledge except as to those matters which are therein stated to be on the information and belief of the complainants, and as to those matters he believes it to be true.

ALBERT J. STONE.

Subscribed and sworn to before me this twenty-first day of December, A. D. 1888.

JOHN T. NOYES,
Master in Chancery of the Superior Court of Cook County.

STATE OF ILLINOIS, } ss:
Cook County, }

Albert J. Snell, being duly sworn, on oath states he is one of the complainants in the foregoing bill named, and has heard the same read and knows the contents thereof; that the matters and things in said bill contained are true of his own knowledge except as to those matters which are therein stated to be on the information and belief of the complainants, and as to those matters he believes it to be true.

ALBERT J. SNELL.

33 Subscribed and sworn to before me this twenty-first day of December, A. D. 1888.

JOHN T. NOYES,
Master in Chancery of the Superior Court of Cook County.

Let the writ of injunction issue in accordance with the prayer of the complainants in the foregoing bill of complaint, upon complainants, or some of them, entering into and filing with the clerk of this court a good and sufficient bond in the penal sum of five

hundred dollars, lawful money of the United States, with surety to be approved by said clerk.

H. M. SHEPARD, *Judge.*

Respectfully recommended.

J. T. N., *Master, &c.*

Master's fee, $5.00, paid by compl'ts.

(Here follows diagram marked p. 34.)

35 EXHIBIT B.

CHICAGO, *Nov. 28th*, 1888.

To the honorable mayor and common council of the city of Chicago.

GENTLEMEN: The undersigned, citizens and property-owners of this vicinity, most respectfully request your honorable body to have an apron placed across the ditch on the southeast corner of Milwaukee avenue and Fullerton Ave. In order to do this it will be necessary to remove a small office owned and occupied by Mr. Snell as a toll office. By granting this request you will greatly oblige a large number of citizens and tax-payers.

Names.	Residence.
A. L. Adam	1742 Milwaukee Ave.
J. C. Gunderson	1728 & 1730 Milwaukee Ave.
Wm. Ringlar	Fullerton & Burchell Ave.
Johnny Green	Cor. Burchel & Fullerton Aves.
P. Wilson	1906 Milwaukee Ave.
Geo. B. Miller	84 Bingham St.
W. F. Bahn	1742 Milwaukee Ave.
Peter Fox	875 Milwaukee Ave.
Charles Junge	928 Milwaukee Ave.

I hereby certify that the above is a true copy of the original petition.

GEO. W. DEAL,
Sup't of Str's.

36 CITY COUNCIL.

Regular Meeting, December 10, 1888.

Official record.

Present: His honor the mayor and Alderman Dixon, Whelan, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22d ward), McCormick, O'Brien, Mannierre, and Tiedemann.

Absent: Alderman Hamline, Connor, Landon, and Horner.

Minutes.

Ald. Ernst moved that the minutes of the regular meeting, held Dec. 3, 1888, be approved without being read.

The motion prevailed.

Reports of City Officers.

His honor the mayor submitted his report of releases from the house of correction for the week ending December 8, 1888, which was placed on file.

Also the following communication:

MAYOR'S OFFICE,
CHICAGO, *December* 10, 1888.

37 To the mayor and alderman of the city of Chicago in council assembled:

GENTLEMEN: I submit herewith an ordinance authorizing the commencing of proceedings to condemn land needed for the proposed new bridge at Madison street, respectfully asking for its passage and the repeal of the ordinance for the condemnation of land on the west side of the river.

Respectfully submitted.

JOHN A. ROCHE, *Mayor.*

Ald. Ernst moved that the ordinance referred to in the communication of his honor the mayor, and entitled "An ordinance for widening the south branch of Chicago river north of and adjoining Madison street," be passed.

The motion prevailed by yeas and nays as follows:

Yeas—Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Weber, Cullerton, Nohe, Wallner, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Harris, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedmann—36.

Nays—None.

The clerk presented a copy of the resolutions adopted at a meeting of the citizens of the South side held at Central Music hall December 8, 1888, requesting your honorable body to take early and favorable action upon the pending ordinance for an elevated railroad on State street.

Ald. Wetherell objected to the presentation in the future,
38 by the clerk, of such documents as the foregoing until after the call of the wards was completed.

The chair decided that, as there was no objection at the time to the presentation of the document referred to, it would be admitted, but in future if objection were raised to the introduction of such documents they would have — lie over.

Ald. Campbell moved that the same be laid over until such time as the ordinance bearing on the subject is taken up for consideration.

Ald. Wetherell moved as an amendment that it be referred to the committee on judiciary.

The motion prevailed.

The clerk presented the report of the commissioners to make estimate for sidewalk on both sides of West Van Buren street from Canal street to Halsted street.

Ald. Sheridan moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of Austin avenue from Jefferson street to Morgan street.

Ald. Young moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for
39 sidewalk on both sides of West Jackson street from Western avenue to Kedzie avenue.

Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of Austin avenue from Morgan street to Noble street.

Ald. Pond moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of Hudson avenue from Sigel street to Center street.

Ald. Rix moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of Halsted street from north branch Chicago river to Division street.

Ald O'Brien moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for
40 sidewalk on both sides of Sherman place from Pine street to its western terminus.

Ald. Tiedemann moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for side-

walk on both sides of Cologne street from Lock street to Hickory street.

Ald. Burke (6th ward) moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of Hickory avenue from Division street to Blackhawk street.

Ald. O'Brien moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for sidewalk on both sides of West Adams street from Rockwell street to Sacramento avenue.

Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for
41 six-inch drains on West Congress street from Campbell avenue to Rockwell street.

Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Potomac avenue from Robey street to Western avenue.

Ald. Weinhardt moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Sacramento avenue from West Lake street to West Kinzie street.

Ald. McGregor moved that the report be approved, and that the *report* thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Church place from Aberdeen street to Center avenue.

Ald. Harris moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Avon place from Roby street to Hoyne avenue.

42 Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-

inch drains on Harvard street from Western avenue to Campbell avenue.

Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Francisco street from West Kinzie street to Colorado avenue.

Ald. McGregor moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Twenty-ninth street from Hanover street to Halsted street.

Ald. Emmerich moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Perry street from Clybourn avenue to Fullerton avenue.

Ald. Rix moved that the report be approved, and that the order thereto attached be passed.

43 The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Orchard street from Clybourn avenue to North avenue.

Ald. Reich moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six-inch drains on Webster avenue from Clybourn avenue to Dominick street.

Ald. Rix moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for six lamp-posts on Jay street from Webster avenue to Belden avenue.

Ald. Rix moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for fourteen lamp-posts on Howe street from Willow street to Center street.

Ald. Rix moved that the report be approved, and that the order thereto be passed.

The motion prevailed.

44 Also the report of the commissioners to make estimate for curbing, grading, and paving Loomis street from West Van Buren street to 100 feet north of West Congress street.

Ald. Pond moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, filling, and paving Cypress street from Kensall street to West Twelfth street.

Ald. Nohe moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, filling, and paving Troy street from Fillmore street to Twelfth street.

Ald. Nohe moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, filling, and paving Cicero court from West Van Buren street to West Congress street.

Ald. White moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, grading, and paving the east and west alley in S. ½ block 49 of section 7, 39, 14 N.

Ald. Sheridan moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

45 Also the report of the commissioners to make estimate for curbing, grading, and paving South Water street from Michigan avenue to Central avenue.

Ald. Dixon moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, grading, and paving Central avenue from Randolph street to South Water street.

Ald. Dixon moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for grading and paving Adams street from State street to Michigan avenue.

Ald. Dixon moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

Also the report of the commissioners to make estimate for curbing, grading, and paving Fourteenth street from Clark street to Wabash avenue.

Ald. Appleton moved that the report be approved, and that the order thereto attached be passed.

The motion prevailed.

16 The commissioner of public works presented a report and ordinance for six inch drains on Meridian street from Desplaines street to Halsted street.

By unanimous consent, on motion of Alderman Harris, the ordinance was put upon its passage and passed by yeas and nays as follows: Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sherman, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Blanche street from Fleetwood street to Ashland avenue.

By unanimous consent, on motion of Ald. Kowalski, the ordinance was put upon its passage and passed by yeas and nays as follows: Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on McHenry street from North avenue to Blanche street.

17 By unanimous consent, on motion of Ald. Kowalski, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Twenty-fifth street from State street to Sanger street.

By unanimous consent, on motion of Ald. Oehman, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn,

Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Mannerre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Fifth avenue from Thirty-first street to Thirty-third street.

By unanimous consent, on motion of Ald. Oehman, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehman, Emmerich, Burke (6th ward), Murphy, Love, Monear,
48 Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Mannerre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Butler street from Twenty-fourth street to Thirty-first street.

By unanimous consent, on motion of Ald. Oehman, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowlask, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Mannerre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Dean street from Brigham street to Paulina street.

By unanimous consent, on motion of Ald. Bowler, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix,
49 Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Mannerre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Damon street from Shoffo street to May street.

By unanimous consent, on motion of Ald. Sheridan, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn,

Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Julian street from Ashland avenue to Wood street.

By unanimous consent, on motion of Ald. Bowler, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Olive
50 street from West Taylor street to West Twelfth street.

By unanimous consent, on motion of Ald. Pond, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Twenty-fourth place from Wentworth avenue to Hanover street.

By unanimous consent, on motion of Ald. Oehmen, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six-inch drains on Astor street from Schiller street to Burton place.

By unanimous consent, on motion of Ald. Burke (22nd
51 ward), the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear,

Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving West Sixteenth street from Canal street to Halsted street.

By unanimous consent, on motion of Ald. Murphy, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward) Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving West Seventeenth street from Union street to Halsted street.

By unanimous consent, on motion of Ald. Love, the ordi-
52 nance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward) Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving West Huron street from Leavitt street to Western avenue.

By unanimous consent, on motion of Ald. McGregor, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving West Harrison street from Rockwell street to California avenue.

By unanimous consent, on motion of Ald. Campbell, the
53 ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmenn, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving Nineteenth street from State street to Clark street.

By unanimous consent, on motion of Ald. Appleton, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hep-
54 burn, Oehman, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, filling, and paving Nutt street from West Sixteenth street to West Eighteenth street.

By unanimous consent, on motion of Ald. Monear, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving Canal street from West Harrison street to West Twelfth street.

By unanimous consent, on motion of Ald. Murphy, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bow-
55 ler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving alley in block 11, Wolcott's addition to Chicago.

By unanimous consent, on motion of Ald. Manierre, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving the alleys from Fifth avenue to Market street between Madison street and Monroe street.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix,
56 Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving alley from Jackson street to Van Buren street between State street and Wabash avenue.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving alley, block 3, fractional section 15, addition to Chicago.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Waller, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix,
57 Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for the curbing, grading, and paving alley in block 4, fractional section 15, addition to Chicago.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22d ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving alley in block 10, Fort Dearborn addition to Chicago.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehman, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix,
58 Hage, Reich, Ernst, Burmeister, Burke (22d ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving alley in block 23, Wolcott's addition to Chicago.

By unanimous consent, on motion of Ald. Manierre, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving north and south alley in block 4, original town of Chicago.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

59 Also a report and ordinance for curbing, grading, and paving east and west alley in block 15, Kinzie addition to Chicago.

By unanimous consent, on motion of Ald. Manierre, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing, grading, and paving Butterfield street from Sixteenth street to Twenty-second street.

By unanimous consent, on motion of Ald. Appleton, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

60 Also a report and ordinance for grading — paving Market street from Lake street to Randolph street.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for grading and paving Calhoun place from Franklin street to Market street.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manniere, Tiedemann—43.

Nays—None.

Also a report and ordinance for grading and paving Calhoun place from Clark street to Fifth avenue.

61 By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for grading and paving Court place from La Salle street to Fifth avenue.

By unanimous consent, on motion of Ald. Dixon, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for grading and paving West Eighteenth street from Union street to Halsted street.

62 By unanimous consent, on motion of Ald. Murphy, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for grading and paving Jefferson street from West Madison street to West Kinzie street.

By unanimous consent, on motion of Ald. Young, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appelton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerick, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for curbing and filling Bissell street from Dayton street to Garfield avenue.

By unanimous consent, on motion of Ald. Rix, the ordinance was put upon its passage and passed by yeas and nays as follows:

63 Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for eight lamp-posts on Lawndale avenue from West Twenty-fourth street to West Twenty-fifth street.

By unanimous consent, on motion of Ald. Nohe, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowlaski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for three lamp-posts on Thirty-fourth street from Vernon avenue to South Park avenue.

By unanimous consent, on motion of Ald. Hammer, the ordinance was put upon its passage and passed by yeas and nays as follows:

64 Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for three lamp-posts on Locust street from Sedgwick street to Townsend street.

By unanimous consent, on motion of Ald. O'Brien, the ordinance was put upon its passage and passed by yeas and yeas as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehman, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance for six lamp-posts on West Twenty-second street from Central Park avenue to Lawndale avenue.

By unanimous consent, on motion of Ald. Nohe, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love,
65 Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann,—43.

Nays—None.

Also a report and ordinance for eight lamp-posts on Millard avenue from West Twenty-fourth street to West Twenty-fifth street.

By unanimous consent, on motion of Ald. Nohe, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

Also a report and ordinance repealing ordinance for the condemnation of property and easement for Madison-street bridge.

By unanimous consent, on motion of Ald. Harris, the ordinance was put upon its passage and passed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond,
66 White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22nd ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

The following is the ordinance as passed:

Ordinance Repealing Ordinance for the Condemnation of Property and Easement for Madison Bridge.

Be it ordained by the city council of the city of Chicago:

SECTION 1. That the ordinance entitled "An ordinance for the condemnation of property and easement for Madison-street bridge" passed September 26, 1887, be and the same is hereby repealed.

SEC. 2. That the corporation council is hereby directed to dismiss and discontinue all proceedings in the superior court of Cook county in respect to said improvement.

SEC. 3. This ordinance shall be in force from and after its passage.

Petitions, Communications, and Ordinances.

Ald. Dixon presented an order to permit Herbert Kinsley to erect a canopy or awning at the entrance to 105 Adams street, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public works be, and he is hereby, directed to issue a permit to Herbert Kinsley to erect a canopy or awning over the sidewalk at the entrance to his
67 restaurant, number 105 Adams street, according to plans and specifications to be approved by the commissioners of public works.

Ald. Dixon presented revocation or written consent given by James W. Cochran, a property-owner, fronting on State street, to "The Consolidated Rapid Transit and Elevated Railroad Company of Chicago" to construct and operate a double-track elevated railroad along and over State street; which was—

Referred to the committee on judiciary.

Ald. Dixon presented a preamble and resolution providing for the appointment of a committee of five, who, together with his honor the mayor and commissioner of public works, shall request the representatives of the various steam railroad companies to confer with said committee with a view to using the right of way of said various steam railroad companies for the purpose of constructing "L" roads; which was laid over temporarily.

Ald. Whelan presented an order to permit Wm. Petilon to erect a barber pole and lamp, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that permission and authority is hereby given to Wm. Petilon to place a barber pole and lamp on the curb in front of his shop at 77 South Clark street.

Ald. Whelan presented an order to grant permission to John C. Sterchie to erect storm doors in front of 271 and 273 South Clark street, and moved its passage.

The motion prevailed.

68 The following is the order as passed:

Ordered that permission be hereby granted to John C. Sterchie to erect storm doors in front of the Belmont house, Nos. 271 and 273 South Clark street; to be done under the supervision of the department of public works.

Ald. Gorton presented petition of citizens of the Third ward, praying that an ordinance be passed granting permission to the Chicago Rapid Transit & Elevated Railroad Company of Chicago to erect an elevated road on State street; which was—

Referred to the committee on judiciary.

Ald. Wetherell presented an order to let contract for stone sidewalk on the north side of Thirty-first street from Michigan avenue to Cottage Grove avenue, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public works be, and he is hereby, directed to let the contract for a stone sidewalk on the north side of Thirty-first street from Michigan avenue to Cottage Grove avenue in accordance with the ordinance already passed: Provided, the contractor will wait for his pay until the assessment is collected.

Ald. Hammer presented a petition and an order for repaving with cedar blocks University place; which was—

Referred to the department of public works for an ordinance.

Ald. Hammer presented petitions of citizens of the Fourth
69 ward, praying that an ordinance be passed granting permission to the Chicago Rapid Transit & Elevated Railroad Company of Chicago to erect an elevated road on State street; which was—

Referred to the committee on judiciary.

Ald. Hepburn presented an order for Dyott Champion lamps on Thirty-sixth street from Ellis avenue to Lake avenue; for sidewalk on both sides of Thirty-sixth street from Ellis avenue to Lake avenue, and for curbing, grading, and paving with cedar blocks *from* Thirty-sixth street from Ellis avenue to Lake avenue; which was—

Referred to department of public works for proper ordinances.

Ald. Oehmen presented a draft of an ordinance granting permission to W. C. Wyman & Company to lay down, maintain, and operate two railway tracks across Twenty-first street west of Clark street; which was—

Referred to the committee on streets and alleys, S. D.

Ald. Oehmen presented a petition and an order to proceed in the matter of opening Thirty-second street from Butterfield street to Portland avenue, and moved the passage of the order.

The motion prevailed.

The following is the order as passed:

Ordered that the corporation counsel be, and is hereby, directed to proceed in the matter of condemning the necessary property for the opening of Thirty-second street from Butterfield street to Portland avenue.

Ald. Burke (6th ward) presented a petition for a sewer in Honore and in Thirty-seventh streets; which was—

Referred to the department of public works, with power to act.

70 Ald. Love presented an order for planking with three-inch oak plank the alley between Halsted street and Newberry avenue and Maxwell street and Twelfth street; which was—

Referred to department of public works for an ordinance.

Ald. Cullerton presented a petition relating to piling lumber within the city limits; which was—

Referred to the committee on fire and water.

Ald. Cullerton presented a petition of property-owners relative to sidewalk on the east wing of Vernon park; which was—

Referred to the committee on streets and alleys, W. D.

Ald. Nohe presented a supplemental petition of frontage of the West Chicago Rapid Transit Company; which was referred to the committee on streets and alleys, W. D.

Ald. Nohe presented an order to permit Thomas F. Farrell & Co. to enlarge their pipe works adjoining the Wisconsin Central railroad tracks and Ogden avenue, and moved that it be referred to the commissioner of buildings, with power to act.

Ald. Manierre moved that it be referred to the committee on fire and water.

The motion prevailed.

Ald. Nohe presented an order for curbing and filling Ashland street from Robey street to Olive street; which was—

Referred to the department of public works for an ordinance.

Ald. Nohe presented an order for curbing and filling Cypress street from West Taylor street to West Twelfth street; which was—

71 Referred to the department of public works for an ordinance.

Ald. Nohe presented an order for paving Clifton Park avenue from Ogden avenue to West Twenty-second street, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public work be, and is hereby, directed to prepare and submit to this council an ordinance for paving Clifton Park avenue from Ogden avenue to West Twenty-second street on present roadway, thirty feet in width, to be paved with cedar blocks and stone curb.

Ald. Nohe presented an order for paving Clifton Park avenue from West Twenty-sixth street to West Twenty-second street on present roadway, thirty feet in width, to be paved with cedar blocks and stone curb; which was—

Referred to department of public works for an ordinance.

Ald. Nohe presented an order for gas lamps on Homan avenue from Ogden avenue to C., B. & Q. railway tracks; which was—

Referred to department of public works for an ordinance.

Ald. Nohe presented a petition to vacate part of alley in block 3, Grant's addition; which was—

Referred to the committee on streets and alleys, W. D.

Ald. Wallner presented an order for a four-foot sidewalk on Douglas court from Washtenaw avenue to California avenue; which was—

Referred to department of public works for an ordinance.

72 Ald. Wallner presented an order for curbing, filling, and paving with cedar blocks Seventeenth street from Wood street to Lincoln street; which was—

Referred to the department of public works for an ordinance.

Ald. Wallner presented an order to straighten an alley between Wood and Lincoln streets north of Thirteenth street; which was—

Referred to the committee on streets and alleys, W. D.

Ald. Pond presented revocations of written consent given by owners of property fronting on West Lake street to "the Lake Street Elevated Railway Company" (683 feet), the Hannah's system (1,182.20 feet), and the Chicago Rapid Transit Company (100 feet) to construct and operate an elevated railroad along and over Lake street; which were—

Referred to the committee on streets and alleys, W. D.

Ald. Pond presented an order to stay the improvement of the alley running from Ogden avenue to Jackson street between Ashland avenue and Paulina street, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the corporation counsel be, and he is hereby, directed to stay all proceedings in the matter of curbing, grading, and paving with cedar blocks the alley running from Ogden avenue to Jackson street between Ashland boulevard and Paulina
73 street until otherwise ordered by the *the* council.

Ald. Badenoch presented the petition of John O'Brien for injury to his horse; which was—

Referred to the committee on finance.

Ald. Campbell presented an order to repeal and stay the improvement of the alley running from Hoyne to Ashland avenues between Warren avenue and Washington boulevard, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the department of public works be, and it is hereby, directed to prepare and send to this council an ordinance repealing an ordinance heretofore passed by this council for curbing and paving the alley running from Ashland to Hoyne avenues between Warren avenue and Washington boulevard, and that until further order of this council the law department are directed to stay all proceedings in regard to the assessment.

Ald Campbell presented a petition of owners of property abutting on alley from Ashland avenue to Hoyne avenue between Warren avenue and Washington boulevard, praying for the repeal of the ordinance providing for the improvement of said alley; which was—

Referred to the department of public works for a repealing ordinance.

Ald. Campbell presented an order for an ordinance establishing the sidewalk at the curb on Polk street between
74 Western and Campbell avenues; which was—

Referred to department of public works for an ordinance.

Ald. Campbell presented a petition for a sewer in Lexington street from Rockwell street to California avenue; which was—

Referred to the department of public works, with power to act.

Ald. Campbell presented a petition of owners of property on Colorado avenue between Central Park avenue and the boulevard connecting Garfield and Douglas parks, praying the said portion of said Colorado avenue be curbed, filled, and paved; which was—

Referred to the department of public works for an ordinance.

Ald. Campbell presented an order for curbing, filling, and paving with cedar block Utica street from Twelfth street to Fillmore street; which was—

Referred to the department of public works for an ordinance.

Ald. Campbell presented an order for an ordinance establishing roadway at thirty (30) feet on the following streets: Troy street and Utica street from Twelfth street to Fillmore street; which was—

Referred to department of public works for an ordinance.

Ald. White presented a remonstrance against the proposed construction of a surface railroad on Paulina street from Lake
75 street to Twelfth street; which was—

Referred to the committee on streets and alleys, W. D.

Ald. White presented revocations of consent given for the construction of a surface railroad on Paulina street between Lake street and Twelfth street; which *was*—

Referred to the committee on streets and alleys, W. D.

Ald. White presented an order for curbing, filling and paving with cedar blocks West Monroe street from California avenue to Colorado avenue; which was—

Referred to the department of public works for an ordinance.

Ald. White presented an order directing the commissioner of public works not to prepare an ordinance for paving Albany avenue from Van Buren street to Kinzie street, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public works be, and he is hereby, directed not to submit to this council an ordinance for paving Albany avenue from Van Buren street to Kinzie street.

Ald. White presented a petition to repeal the ordinance for improving Avon place, passed October 8, 1888; which was—

Referred to the committee on streets and alleys, W. D.

Ald. White presented an order for curbing, filling, and paving with cedar blocks West Monroe street from Albany avenue
76 to Kedzie avenue; which was—

Referred to department of public works for an ordinance.

Ald. White presented an order for oil lamps on Sacramento avenue from Harrison street to Polk street; which was—

Referred to the department of public works for an ordinance.

Ald. White presented an ordinance for the vacation of Grenshaw street from Rockwell street to Washtenaw avenue; which was—

Referred to the committee on streets and alleys, W. D.

Ald. McGregor presented a petition and an order for opening an alley 16 feet wide from Western avenue to Oakley avenue between Washington boulevard and Park avenue; which were—

Referred to the department of public works for an ordinance.

Ald. McGregor presented additional petitions for right of way for Lake Street Elevated Railway Company (Miegs); which *was*—

Referred to the committee on streets and alleys, W. D.

Ald. Pond presented revocations of written consent given by owners of property fronting on West Lake street to "the Chicago & Cook County Passenger & Dummy Railway Company" to construct

and operate an elevated railroad along and over Lake street; which were—

Referred to the committee on streets and alleys, W. D.

77 Ald. Badenoch presented a petition of John O'Brien for compensation for injury to horse; which was—

Referred to the committee on finance.

Ald. Weinhardt presented an order for paving with cedar blocks West Division street from Western avenue to Sacramento avenue; which was—

Referred to department of public works for an ordinance.

Ald. Doornbos presented a petition and an order for the removal of the toll-office of Mr. Snell, located on the southeast corner of Milwaukee avenue and Fullerton avenue, and moved the passage of the order.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public works be, and he is hereby, directed to remove said office in accordance with the petition hereto attached.

Ald. Doornbos presented an order for oil lamps on Homer street from North Robey street to North Oakley avenue and on Courtland street from Robey street to Wilmot avenue; which was—

Referred to the department of public works for proper ordinances.

Ald. Doornbos presented an order for oil-lamp posts on Humbolt street from North avenue to Armitage avenue; on Peterson
78 street from Robey street to Hoyne avenue; on Churchill street from Robey street to Wilmot avenue; on Wilmot avenue from Armitage avenue to Hoyne avenue; on Greenwich avenue from Robey street to Leavitt street; which was—

Referred to the department of public works for proper ordinances.

Ald. Kowalski presented an order to compel the C. & N. W. R. R. Co. to erect a protection gate at their Bradley-street crossing, and moved its passage.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of public works be, and he is hereby, directed to notify the C. & N. W. R. R. Co. to erect a protection gate at their crossing at Bradley street.

Ald. Horn presented an order for oil-lamp posts on Cornelia street from Holt street to Paulina street; which was—

Referred to the department of public works for an ordinance.

Ald. Horn presented an order for lamp-posts on Cork street from Ashland avenue to Paulina street; which was—

Referred to the department of public works for an ordinance.

Ald. Horn presented an order for a six-foot sidewalk on the south side of Cork street from Ashland avenue to Paulina street; which was—

79 Referred to the department of public works for an ordinance.

Ald. Sheridan presented a remonstrance against the building of sidewalk in the alleys running east and west from Center avenue to Lytle street between McAlister place and Gilpin place; which was—

Referred to the committee on streets and alleys, W. D.

Ald. Sheridan presented an order to permit Levy Rynardt to erect an advertising sign in front of 385 South Halsted street, said sign to be removed at the expiration of thirty days from date of permit; which was—

Referred to commissioner of public works, with power to act.

Ald. Powers presented a petition and an order to stay the improvement of Damon street from May to Sholto streets, and moved the passage of the order.

The motion prevailed.

The following is the order as passed:

Ordered that the law department be, and *he* is hereby, directed to stay all proceedings in the matter of paving Damon street from May to Sholto streets until further order of this council.

Ald. Powers presented an order to permit the opening of Canal street in front of lot 3, block 54, S. S., for the purpose of laying gas-service pipes into said lot, and moved its passage.

The motion prevailed.

80 The following is the order as passed:

Ordered that the commissioners of public works be, and he is hereby, authorized and empowered to issue or cause to be issued a permit for opening so much of Canal street in front of lot 3 (5), block fifty-four (54), school section addition to Chicago, as may be necessary for the purpose of laying gas-service pipe inside of the street wall in front of said described premises and connecting the same with the gas-main pipe in said street.

Judiciary.

By consent, on motion of Ald. Rix, the committee on judiciary, to whom was referred a letter from George L. Phillips to Mayor John A. Roche relative to applications for permits, etc., from the city in regard to telephone wires, etc., submitted a report recommending that said communication be placed on file, and that an accompanying order be adopted.

Ald. Rix moved to concur in the report and adopt the order.

The motion prevailed.

The following is the order as adopted:

Ordered by the city council of the city of Chicago that the commissioner of public works of the city of Chicago grant no permits to the Bell Telephone Company of Boston to lay wires or do business in the streets or alleys of the city of Chicago until further directed by this council.

81 Ald. Burmeister presented an order for filling, curbing, and paving Town street from Blackhawk street to North avenue; which was—

Referred to the department of public works for an ordinance.

Ald. Burmeister presented a petition asking for the repeal of an ordinance for improving an alley lying between Clark street and Dearborn avenue, north of Burton place; which was—

Referred to the committee on streets and alleys, N. D.

Ald. McCormick presented a petition for compensation for damages of property at the northwest corner of Dearborn avenue and North Water street, occasioned by the erection of approaches, etc., to the Dearborn-street bridge; which was—

Referred to the committee on finance.

Ald. O'Brien presented an order for four lamp-posts on Locust street from Market street to its western terminus; which was—

Referred to the department of public works for an ordinance.

Ald. Tiedemann presented an order for curbing, grading, and paving with cedar blocks all of the public alleys in the block bounded by Superior street, Huron street, North Clark street, and La Salle avenue; which was—

Referred to the department of public works for proper ordinances.

Ald. Manierre presented a communication from the Illinois
82 Woman's Alliance looking towards the enforcement of the compulsory education law; which was—

Referred to the committee on schools.

83 *Reports of Standing Committees.*

Finance.

The committee on finance, to whom was referred the petition of Herman W. Valentine asking for payment for balance due him for work and teaming done for, one James H. Bingham, a contractor employed by the city for curbing, grading, and paving with asphalt paving the alley between Wabash avenue and *and* Michigan avenue, submitted a report that, inasmuch as the contract between said Bingham and the city of Chicago provides and empowers the commissioner of public works to pay to any laborer or laborers employed by said contractor, upon the above-described work out of funds due said contract, said committee therefore recommends the passage of an accompanying order.

Ald. Wetherell moved to concur in the report and pass the order.

The motion prevailed by yeas and nays as follows:

Yeas—Dixon, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Mouear, Weber, Bartels, Culleton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22d ward), McCormick, O'Brien, Manierre, Tiedemann—43.

Nays—None.

The following is the order as passed:

Ordered that the city comptroller be, and he is hereby, au-
84 thorized and directed to pay to Herman W. Valentine the sum of one hundred and forty-four and $\frac{50}{100}$ dollars ($144.50)

upon the voucher of the department of public works, the same to be charged to the amount due said contractor: Provided that the evidence shows that the work was done by said Valentine, as he alleges, and that he has not been paid therefor.

Also the same committee, to whom was referred an order directing the comptroller to refund to Charles Brown the sum of one hundred and thirty-five dollars ($135) deposited by him July, 1887, at the Desplaines-street station, submitted a report recommending the passage of an accompanying order.

Ald. Wetherell moved to concur in the report and pass the order.

The motion prevailed by yeas and nays as follows:

Yeas—Dixon, Whelan, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, Burke (22d ward), McCormick, O'Brien, Manierre—43.

Nays—None.

The motion prevailed.

The following is the order as passed:

Ordered that the comptroller be, and he is hereby, directed
85 to refund to Charles Brown the sum of one hundred and thirty-five dollars ($135) deposited by him at the Desplaines-street station as a special bail to the city July, 1887, upon proper receipt for the payment of said sum.

Judiciary.

The committee on judiciary, to whom was referred a communication relative to the one hundred thousand dollars paid into the city treasury by the Chicago and South Side Rapid Transit Railway Company, submitted a report recommending that the same be placed on file.

Ald. Rix moved to concur in the report.

The motion prevailed.

Schools.

The committee on schools, to whom was referred an order directing the comptroller to invest $500.00 belonging to the Jonathan Burr fund, submitted a report recommending the passage of the order.

Ald. White moved to concur in the report and pass the order.

The motion prevailed by yeas and nays as follows:

Yeas—Dixon, Whelan, Appleton, Wetherell, Gorton, Hammer, Hepburn, Oehmen, Emmerich, Burke (6th ward), Murphy, Love, Monear, Weber, Bartels, Cullerton, Nohe, Wallner, Badenoch, Pond, White, Campbell, McGregor, Johnson, Weinhardt, Doornbos, Bowler, Horn, Kowalski, Mulvihill, Young, Harris, Sheridan, Powers, Rix, Hage, Reich, Ernst, Burmeister, McCormick, O'Brien,
86 Manierre, Tiedemann—43.

Nays—None.

The following is the order as passed:

Ordered that the comptroller be, and is hereby, authorized and directed to invest the sum of five hundred dollars ($500) from the money in the treasury to the credit of the Jonathan Burr fund, in accordance with the recommendation of the board of education adopted October 3, 1888.

Also the same committee, to whom was referred an order directing the board of education to file copy of contracts with the city comptroller, submitted a report recommending the passage of the order.

Ald. White moved to concur in the report and pass the order.

The motion prevailed.

The following is the order as passed:

Ordered that the board of education shall, after any contract is made (relating to matters which by law require the concurrence of the city council), file with the city comptroller a copy of any such contract and of the specifications.

Also the same committee, to whom was referred a communication of the board of education for purchase of a school site,
87 corner of Jay street and Belden avenue, submitted a report recommending that said communication be placed on file.

Ald. White moved to concur in the report.

In this connection Ald. Burmeister presented a remonstrance against the purchase of a school site at the location named, for the reason that said location adjoins the car barns of the North Chicago Street Railroad Company.

After debate, the question being on the motion of Ald. White to concur in the report, it was—

Agreed to.

By consent, Ald. Rix presented a resolution requesting the board of education to advertise for a school site in the vicinity of Jay street and Belden avenue, and moved its adoption.

The motion prevailed.

The following is the resolution as adopted:

Resolved, That the board of education be hereby requested to advertise for another school lot for school purposes in place of the one on the corner of Jay street and Belden avenue.

Fire and water.

The committee on fire and water, to whom was referred the petition of Francis P. Owings to erect fire-proof tower for water tank, submitted a report recommending that the same be referred to the department of buildings, with power to act.

Ald. McGregor moved to concur in the report.

88 The motion prevailed.

Also the same committee, to whom was referred the petition of Mrs. Curtis to complete a frame building in the rear of 305 Webster avenue, submitted a report recommending that said petition be placed on file.

Ald. McGregor moved to concur in the report.

The motion prevailed.

Also the same committee, to whom was referred the petition of John R. Coyne to construct sample cases on area space, submitted a report recommending that the prayer of the petitioner be granted.

Ald. McGregor moved to concur in the report.

The motion prevailed.

Streets and alleys, S. D.

The committee on streets and alleys, S. D., to whom was recommitted the petition to lower grade on South La Salle street between Douglas and Egan avenues, submitted a report recommending that the same be placed on file.

Ald. Gorton moved to concur in the report.

The motion prevailed.

Also the same committee, to whom was recommitted an order to permit Thomas C. Platt to erect a sign at 87 and 89 Washington street, submitted a report recommending the passage of the order.

Ald. Gorton moved to concur in the report and pass the order.

The motion prevailed.

The following is the order as passed:

Ordered that the commissioner of works be, and he is hereby, authorized and directed to issue a permit to Thomas C. Platt to erect a wrought and cast iron sign from the second story of the building known and numbered as 87 and 89 Washington street, said sign to be constructed according to the plans herewith submitted, provided the same are approved by the commissioner of public works, the erection of said sign and all work pertaining thereto to be under the supervision and direction of said commissioner of public works.

Streets and alleys, W. D.

The committee on streets and alleys, W. D., to whom was referred a petition to vacate an alley in Sheffield's addition, submitted a report recommending that said petition be referred to the department of public works for an ordinance.

Ald. Badenoch moved to concur in the report.

The motion prevailed.

Also the same committee, to whom was referred the petition of C. Yunk for resubdivision of lots 7, 8, and 9 and vacation of part — alley in block 11, Douglas Park addition, submitted a report recommending the passage of an accompanying order.

Ald. Badenoch moved to concur in the report and pass the order.

90 The motion prevailed.

The following is the order as passed.

Ordered that the commissioner of public works be, and he is hereby, directed to prepare and submit to this council an ordinance for opening the part of alley in block 11, Douglas Park addition, section 23, 39, 13, in accordance with the enclosed plat.

Also the same committee, to whom was referred an order and a petition to open Division street from Homan avenue to Central Park

avenue, submitted a report recommending that the same be placed on file.

Ald. Badenoch moved to concur in the report.

The motion prevailed.

Also the same committee, to whom was referred a petition to repeal ordinance for improving Avon place from Hoyne avenue to the alley east, submitted a report recommending that the same be placed on file.

Ald. Badenoch moved to concur in the report.

The motion prevailed.

Also the same committee, to whom was referred an ordinance repealing an ordinance for opening Hoyne avenue from Milwaukee avenue to Hermitage avenue, submitted a report recommending that the same be placed on file.

Ald. Badenoch moved to concur in the report.

The motion prevailed.

91 Also the same committee, to whom was referred a petition and orders to improve Millard avenue from Twenty-sixth street to Douglas Park boulevard, submitted a report recommending the passage of the orders.

Ald. Badenoch moved to concur in the report and pass the orders.

The motion prevailed.

The following are the orders as passed:

Ordered that the commissioner of public works be, and he is hereby, directed to prepare and submit to this council an ordinance for paving Millard avenue from Twenty-sixth street to Ogden avenue with cedar blocks laid on plank foundation, with wood curb; the whole to be thirty feet in width. This improvement to follow present surface grade and include all necessary sewer and water stubs.

Also ordered that the commissioner of public works be, and he is hereby, directed to prepare and submit to this council an ordinance for improving Millard avenue from Ogden avenue to Douglas boulevard with a Macadam roadway thirty feet wide, one foot deep, with wood curb. Said improvement to follow present surface grade and include all necessary sewer and water stubs.

Adjournment.

Ald. Burke (6th ward) moved that the council do now adjourn.

The motion prevailed and the council stood adjourned.

D. W. NICKERSON,
City Clerk.

92 EXHIBIT D.

Ordered that the commissioner of public works be, and he is hereby, directed to remove said office in accordance with the petition hereto attached.

I hereby certify that the above is a true and correct copy of the order introduced in the city council on December 10, 1888, by Ald. Jno. Doornbos.

[SEAL.] D. W. NICKERSON, *City Clerk.*

Know all men by these presents that we, Albert J. Stone, Albert J. Snell, and Bernard A. Eckhart, of the county of Cook and State of Illinois, are held and firmly bound unto the city of Chicago and George B. Swift, commissioner of the board of public works of the city of Chicago, county and State aforesaid, in the sum of five hundred dollars, to be paid to the said city of Chicago and George B. Swift, commissioner, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 21st day of December, A. D. 1888.

Whereas the above-bounden Albert J. Stone, Albert J. Snell and Henrietta Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, complainants, have filed their bill of complaint in the
93 superior court of Cook county and State of Illinois against the above-named The City of Chicago and George B. Swift, commissioner of the department of public works of the city of Chicago, defendants, praying, among other things, for an injunction to restrain the above-named defendants from removing or attempting to remove the toll-gate building on Milwaukee avenue south of Fullerton avenue, and from in any manner interfering or attempting to interfere with the use thereof for the collection of tolls thereat by the complainants;

And whereas said court has allowed an injunction for that purpose, according to the prayer of said bill, upon the said complainants or some of them giving bond and security as provided by law:

Now, therefore, the condition of the above obligation is such that if the above-bounden Albert J. Stone and Albert J. Snell and their said co-complainants, their executors or administrators, or any of them shall and do well and truly pay or cause to be paid to the said defendants, *his* heirs, executors, administrators, or assigns, all such costs and damages as shall be awarded against the said complainants in case the said injunction shall be dissolved, then the above obligation to be void; otherwise to remain in full force and virtue.

ALBERT J. STONE. [SEAL.]
ALBERT J. SNELL. [SEAL.]
BERNARD A. ECKHART. [SEAL.]

Approved.
P. McGRATH,
Clerk Sup. Court.

94 And on the day and year last aforesaid, to wit, December 21st, A. D. 1888, there issued out of the office of the clerk of said court the people's writs of summons and injunction; which writs, with the return of the sheriff thereon endorsed, are in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon City of Chicago and George B. Swift, commissioner of board of public works of the city of Chicago, if they shall be found in your county, personally to be and appear before the superior court of Cook county, on the first day of the term thereof, to be held at the court-house, in Chicago, in said Cook county, on the first Monday of January next, to answer unto Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, and Henrietta Snell, widow of said deceased, in her own right, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and only heirs-at-law of said Amos J. Snell, dec'd, in their certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Patrick McGrath, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 21st day of December, A. D. 1888.

[SEAL.] PATRICK McGRATH, *Clerk.*

95 Endorsed: P'd 2.00. Served this writ on the within-named The City of Chicago, by delivering a copy of the same to John Roche, mayor of said city, this 22nd day of December, 1888; also on George B. Swift, commissioner of public works, of the city of Chicago, by delivering a copy of the same to him this 22nd day of December, 1888. Canute R. Matson, sheriff, by J. H. Burke, deputy.

STATE OF ILLINOIS, } ss.
Cook County, }

The People of the State of Illinois to the City of Chicago and George B. Swift, commissioner of the board of public works of the city of Chicago, defendants, and to your attorneys, solicitors, agents, and servants, and to each and every of them, Greeting:

Whereas it hath been represented to the Honorable Henry M. Shepard, one of the judges of the superior court of Cook county, in the State aforesaid, on the part of Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, and Henrietta Snell, widow of said deceased, in her own right, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and only heirs-at-law of said Amos J. Snell, deceased, complainants, in their certain bill of complaint, exhibited before said judge and filed in said court against you, the said above-named defendants, The City of Chicago and George B. Swift, commissioner of the board of public works of the city of Chicago, among other things, that you are combining and confederating with
96 others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the

premises are contrary to equity and good conscience, and the said judge having under his hand endorsed upon said bill an order that a writ of injunction issue out of said court according to the prayer of said bill, we therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said above-named defendants, City of Chicago and George B. Swift, commissioner, &c., and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from removing or attempting to remove the toll-gate building on Milwaukee avenue south of Fullerton avenue, and from in any manner interfering or attempting to interfere with the use thereof for the collection of tolls thereat by the said complainants until this honorable court in chancery sitting shall make other order to the contrary. Hereof fail not under penalty of what the law directs.

To the sheriff of said county to execute and return in due form of law.

Witness Patrick McGrath, clerk of said court, and the seal thereof, at Chicago aforesaid, this 21st day of December, A. D. 1888.

[SEAL.] PATRICK McGRATH, *Clerk.*

Endorsed: P'd 2.00. Served this writ on the within-named The City of Chicago by delivering a copy of the same to John A. Roche, mayor of said city, this 22nd day of December, 1888; also on the within-named George B. Swift, commissioner of board of
97 public works of the city of Chicago, by delivering a copy of the same to him this 22nd day of December, 1888. Canute R. Matson, sheriff, by J. H. Burke, deputy.

And afterwards, to wit, on the 10th day of January, A. D. 1888, there was filed in the office of the clerk of said court a certain appearance; which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.:
Cook County, }

In Superior Court Thereof.

SNELL *et al.*
vs.
CITY OF CHICAGO and GEO. B. SWIFT.

The appearance of the above defendants — hereby entered in the above-entitled cause.

JOHN W. GREEN AND
CLARENCE A. KNIGHT,
Sol'rs for Def'ts.

And afterwards, to wit, on the 18th day of January, A. D. 1889, there was filed in the office of the clerk of said court a certain demurrer; which is in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss.*:

98 In the Superior Court. In Chancery.

HENRIETTA SNELL *et al.*
vs.
THE CITY OF CHICAGO *et al.*

The demurrer of The City of Chicago and George B. Swift, defendants, to the bill of complaint of complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill, and for cause of demur show that complainants have not in and by their said bill made or stated such a case as entitles them in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be dismissed with their reasonable costs in this behalf sustained.

JOHN W. GREEN AND
CLARENCE A. KNIGHT,
Solicitors for Defendants.

99 And afterwards, to wit, on the 17th day of September, A. D. 1889, the same being one of the days of the September term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

HENRIETTA SNELL *et al.*
vs. } 119,933. Bill.
CITY OF CHICAGO *et al.*

On motion, leave is hereby given the complainants to amend their bill herein.

And on the day and year last aforesaid, to wit, September 17th, A. D. 1889, there were filed in the office of the clerk of said court a certain notice and amendments to bill; which are in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

HENRIETTA SNELL *et al.* }
vs. } Gen. No., 119,933. In Chancery.
THE CITY OF CHICAGO *et al.* }

To Jonas Hutchinson, Esq., corporation counsel, and Edward Roby, Esq., solicitors for defendants:

Take notice that on September 17th, 1889, at the opening of court, before Honorable H. M. Shepard, the complainants
100 will ask leave to amend the original bill herein, according to the amendments, a copy of which is hereto attached and served on you.

Chicago, September 16th, 1889.

FRANK J. CRAWFORD,
90 *Washington St., Complainants' Solicitor.*

Service of the above notice by copy admitted this 16th day of September, A. D. 1889.

JONAS HUTCHINSON,
Defendants' Solicitor.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

HENRIETTA SNELL *et al.* }
vs. } Gen. No., 119,933. In Chancery.
THE CITY OF CHICAGO *et al.* }

And now come the complainants and by leave of court first obtained they hereby amend the bill of complaint herein by inserting therein as follows:

On page 10 of said bill, immediately following the first paragraph thereon, which ends with line 19, numbered from the top of said page, insert the following:

Your orators further represent that the said Northwestern
101 plank road was laid out and constructed as aforesaid upon a certain road or highway formerly known as the Milwaukee road from said intersection with North avenue to the said village of Jefferson, which said Milwaukee road was afterwards named and has since been and still is called and known as Milwaukee avenue, the same being the said Milwaukee avenue hereinbefore and hereinafter mentioned.

And on page 13 of said bill, immediately following the first sentence thereon, which ends with line 9 of said page, numbered from the top, insert the following:

And your orators further represent that the said county of Cook did not purchase the franchise, the property, and immunities of said company.

And afterwards, to wit, on the 28th day of January, A. D. 1890, the same being one of the days of the January term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

HENRIETTA SNELL *et al.*)
vs.) 119,933. Bill.
CITY OF CHICAGO *et al.*)

On motion, leave is hereby given the complainants to amend their bill herein instanter, and it is ordered that the demurrer of the defendants filed herein to the original bill stand to said amended bill.

And on the day and year last aforesaid, to wit, January 28th, A. D. 1890, there was filed in the office of the clerk of
102 said court a certain amendment to bill, which is in words and figures as follows, to wit:

STATE OF ILLINOIS,)
County of Cook,) *ss:*

In the Superior Court of Cook County.

HENRIETTA SNELL *et al.*)
vs.) General No., 119,933. In Chancery.
THE CITY OF CHICAGO *et al.*)

And now come the complainants, and by leave of court first obtained they hereby amend the bill of complaint herein by inserting therein as follows:

On page 7, immediately following "section 23," which ends with line 12, numbered from the top of said page, insert the following:

Your orators further represent that afterwards and prior to March 1, A. D. 1854, and in pursuance of said legislation and enactments of the General Assembly of the State of Illinois, the said incorporators, John Gray, Joseph Filkins, and Thomas Richmond, in said twenty-first section of said last aforesaid mentioned act named as they lawfully might do, did, in good faith, organize the said corporation, the said The Northwestern Plank Road Company, in due form of law, and pursuant to the right and power in that behalf by said enactment conferred on them, and in good faith the said corporators and the said Northwestern Plank Road
103 Company, so as aforesaid incorporated and organized, afterwards and prior to March 1, A. D. 1854, having theretofore been granted by the county commissioners' court of Cook county a license to construct a plank road from the city of Chicago to Oak Ridge and from thence to Wheeling and the north line of said county, as in said enactment declared and stated aforesaid, did proceed to prosecute the construction of said plank road under the powers given and referred to in said enactments.

That the said corporation, the said Northwestern Plank Road Company, under said enactment as aforesaid, had and was given

the right to take and use, for the purposes of constructing said road, any road or public highway along the line of said contemplated plank road upon obtaining the order of the county commissioners' court of said county, to be entered of record, consenting to the appropriation of such road or highway in manner and form as aforesaid as in said act provided; that the said Northwestern Plank Road Company and said incorporators thereof thereafter in good faith and by virtue of the premises and prior to March 1, 1854, did obtain the order of the county commissioners' court of Cook county aforesaid, and which was duly entered of record, consenting to the appropriation by said Northwestern Plank Road Company of a certain road or highway for the purposes of said plank road—that is to say, that certain road or highway along the line of the said plank road, as then contemplated, then known as the Milwaukee road, and which thereafter was and still is named, called, and known as Milwaukee avenue, commencing at a point in said Milwaukee road since and still called and known as Milwaukee avenue as aforesaid, at the intersection therewith of North
104 avenue, which said North avenue was then and there the north limit of said city of Chicago, and running or extending thence from said point of commencement and from said city of Chicago along said Milwaukee road since and still called and known as Milwaukee avenue as aforesaid, which extended from said city of Chicago at its then north limit as aforesaid along the line of said contemplated plank road as aforesaid, to a point on said road or avenue as now called six miles or thereabouts northwest from said intersection.

That by virtue of the premises and pursuant to said order of said county commissioners' court the said Northwestern Plank Road Company and the said incorporators thereof thereupon and prior to the first day of March, A. D. 1854, in good faith and as they lawfully might do, did take and use for the purposes of constructing said plank road, as in said enactment contemplated, the said road or highway then known as the Milwaukee road, also known as, called, and named, as aforesaid, Milwaukee avenue, from the said point of commencement and from said city of Chicago, at its then said north limit, and extending from thence six miles or thereabouts northwest from said intersection.

That by virtue of the premises and the subsequent act of the General Assembly of said State hereinafter next mentioned, which was approved March 1, A. D. 1854, whereby the said acts and doings of the said incorporators were legalized and made valid, as therein set forth, the right to use said highway as aforesaid, called the Milwaukee road and Milwaukee avenue, so as aforesaid taken, appropriated, and used for the purposes of said plank road, did vest in said Northwestern Plank Road Company as fully and completely as though said corporation had obtained the same by grant.

105 That under and by virtue of the premises the said corporation, the Northwestern Plank Road Company, proceeded to and did construct a plank road from the city of Chicago, as authorized by said enactment, and in so doing did take and use as they

lawfully might, as aforesaid, the said road or highway called the Milwaukee road and since and still called and known as Milwaukee avenue, as aforesaid, being the same Milwaukee avenue hereinbefore and hereinafter mentioned.

On page 10 of said bill, immediately following the first paragraph thereon, which ends with line 19, numbered from the top of said page, insert the following:

Your orators further represent that the said Northwestern plank road was laid out and constructed, as aforesaid, upon that certain road or highway formerly known as the Milwaukee road, as aforesaid, from said intersection with North avenue to the village of Jefferson, which said Milwaukee road was afterwards named and has since been and still is called and known as Milwaukee avenue, as aforesaid, the same being the said Milwaukee avenue hereinbefore and hereinafter mentioned.

And on page 13 of said bill, immediately following the first sentence thereon, which ends with line 9 of said page, numbered from the top, insert the following:

And your orators further represent that the said county of Cook did not purchase the franchise, the property, and immunities of said company.

STATE OF ILLINOIS, } ss.
Cook County, }

106 Albert J. Stone, being duly sworn, on oath states that he is one of the complainants in the foregoing amendments to the original bill named and has heard the same read and knows the contents thereof; that the matters and things in said amendments to said bill contained are true of his own knowledge except as to those matters which are therein stated to be on information and belief of complainants, and as to those matters he believes it to be true.

ALBERT J. STONE.

Subscribed and sworn to before me this twenty-seventh day of January, A. D. 1890.

P. McGRATH, *Clk.*

Subscribed and sworn to before me this 28th day of January, A. D. 1890.

P. McGRATH, *Clk.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County.

HENRIETTA SNELL *et al.* }
vs. } In Chancery.
THE CITY OF CHICAGO *et al.* }

107 Frank J. Crawford, being duly sworn, deposes and says that he is one of the complainants' solicitors in said cause;

that said bill was drafted by this deponent, and under the pressing exigency which deponent understood as existing when the same was drawn to prevent the commissioner of the acts therein sought to be enjoined the same was drawn hastily, and by mistake, inadvertence, or accident the matter embraced in the amendments of the bill hereto attached, which the complainants ask leave now to file, was omitted from said original bill, and deponent, on behalf of complainants, represents that said amendments, in his opinion, are important in the proper and sufficient statement of the complainants' teste set up in said bill.

FRANK J. CRAWFORD.

Subscribed and sworn to before me this 22d day of ——, A. D. 1890.

P. McGRATH, *Clerk.*

And afterwards, to wit, on the 6th day of February, A. D. 1890, the same being one of the days of the February term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

HENRIETTA SNELL *et al.*
vs. } 119,933. Bill.
THE CITY OF CHICAGO *et al.*

108 This cause coming on now to be heard upon the demurrer of the defendants filed herein to the bill as amended, after arguments of counsel, said demurrer is sustained.

Thereupon the complainants elect to stand by their bill.

Therefore it is ordered that this cause be, and the same is hereby, dismissed at complainants' cost for want of equity, and that the defendants do have and receive of the same complainants their reasonable costs in this behalf expended and have execution therefor.

To all of which the complainants except and pray an appeal to the supreme court for the northern grand division of Illinois, which is granted to them upon their filing an appeal bond in the penal sum of $250.00, with Albert J. Stone as surety, within twenty days; and it is further ordered that the injunction granted herein be, and the same is hereby, continued in full force and effect during the pendency of this appeal upon the same injunction bond.

And afterwards, to wit, on the 8th day of February, A. D. 1890, there was filed in the office of the clerk of said court a certain appeal bond, which is in words and figures as follows, to wit:

Know all men by these presents that we, Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, and Albert J. Stone, individually, of the city of Chicago, of the county of Cook and State of Illinois, are held and firmly bound unto the city of Chicago and the commissioner of the department of public works of the city of Chicago, also of the same
109 county and State, in the penal sum of two hundred and fifty dollars, lawful money of the United States; for the payment of

which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this sixth day of February, A. D. 1890.

The condition of the above obligation is such that whereas the said The City of Chicago and The Commissioner of the Department of Public Works of the City of Chicago, defendants, did on the sixth day of February, A. D. 1890, in the superior court of Cook county, in the State aforesaid, and of the February term thereof, A. D. 1890, recover a decree against the above-bounden Henrietta Snell and Albert J. Stone, as administrators as aforesaid, and Henrietta Snell, widow of said deceased, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and only heirs-at-law of said Amos J. Snell, deceased, complainants, for the dismissal of their bill of complaint herein for want of equity and for the costs of suit; from which said decree of the said superior court of Cook county the said complainants have prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said complainants shall duly prosecute their said appeal with effect and, moreover, pay the amount of the decree, costs, interests, and damages rendered and to be rendered against them in case the said decree shall be affirmed in said supreme court, then the above obligation to be void; otherwise in full force and virtue.

HENRIETTA SNELL, [SEAL.]
ALBERT J. STONE, [SEAL.]
As Administrators as Aforesaid.
ALBERT J. STONE. [SEAL.]

110

Approved by me—
H. M. SHEPARD, *Judge*.

Feb. 8, '90.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Patrick McGrath, clerk of the superior court of Cook county in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court, on the chancery side thereof, wherein Henrietta Snell *et al.* were complainants and City of Chicago *et al.* defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 18th day of February, A. D. 1890. [COURT SEAL.]

P. McGRATH, *Clerk*.

$17.00 paid by F. J. Crawford.

111 In the Supreme Court of Illinois, Northern Grand Division, March Term, A. D. 1890.

HENRIETTA SNELL and ALBERT J. Stone, Administrators of the Estate of Amos J. Snell, Deceased, and Henrietta Snell, Widow, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary Stone, Children and Only Heirs-at-law of said Amos J. Snell, Deceased, Appellants, *vs.* THE CITY OF CHICAGO *et al.*, Appellees.	Appeal from the Superior Court of Cook County.

Assignment of Errors.

And now come the appellants and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

First. The court below erred in sustaining the demurrer of the defendants below to the bill of complaint.

Second. The court below erred in refusing to overrule the appellees' demurrer to the bill of complaint.

Third. The court below erred in entering a decree dismissing the appellants' bill of complaint for want of equity.

Fourth. The decree of the court below should have been in favor of the appellants.

Fifth. The court erred in entering a decree against the appellants for costs.

Sixth. The record and proceedings aforesaid are otherwise informal, irregular, and defective.

Wherefore the appellants pray that the decree be reversed and the cause remanded with directions to the court below to overrule the demurrer to said bill.

FRANK J. CRAWFORD,
SIDNEY SMITH,
For Appellants.

112 And afterwards, to wit, on the 11th day of March, A. D. 1890, certain proceedings were had and orders made by said supreme court and entered of record, among which is the following, viz:

HENRIETTA SNELL and ALBERT J. Stone, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased,
vs.
THE CITY OF CHICAGO and GEORGE B. Swift, Commissioner of the Department of Public Works of City of Chicago.

Appeal from Superior Court, Cook County.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

113 Be it remembered that afterwards, to wit, on the 14th day of May, A. D. 1890, the opinion of the court was filed in the clerk's office of said court in words and figures following, to wit:

HENRIETTA SNELL *et al.*
vs.
CITY OF CHICAGO *et al.*

No. 72. Appeal from Superior Court, Cook —.

114 No. 72.

Opinion by MAGRUDER, *J.*:

Under recent acts of the legislature a large area of new territory has been annexed to the city of Chicago, so as greatly to extend its boundaries. A portion of the highway known as the Milwaukee road, upon which the toll-gate and toll-house in question are located, was outside of the city limits prior to such annexation, but thereafter and by reason of the enlargement of the city the portion in question was taken into the city and is now a part of the street called Milwaukee avenue. The effect of this change upon the rights of the plank-road company or its successors is the subject presented for consideration.

Section 12 of the act of March 25, 1874, "to revise the law in rela-

tion to toll-roads" (Rev. Stat., chap. 138), provides that "no toll-gate shall be erected or kept or toll demanded within the corporate limits of any incorporated city or within one hundred and sixty rods of such limits." Can this section be enforced against the appellants, so as to compel them to desist from keeping a toll-gate and demanding toll at the intersection of Milwaukee and Fullerton avenues, in the city of Chicago? Is there a contract existing between the State and appellants which relieves them from the duty of obeying this requirement?

Unquestionably sections 21 and 22 of the act of February 12, 1849, were unconstitutional and conferred no rights whatever. They provided for the organization of the "Northwestern Plank Road Company" to construct a plank road from the city of Chicago to Oak Ridge, and from thence to Wheeling and to the north line of Cook county," and were inserted in the body of an act whose title was "An act to construct a plank road from Oswego, in Kendall county, to the Indiana line, by the way of Joliet, Will county."
115 This was a clear violation of that part of section 23 of article 3 of the constitution of 1848 which provides that "no private or local law * * * shall embrace more than one subject, and that shall be expressed in the title."

It must also be held upon the authority of Village of Lockport *vs.* Gaylord, 61 Ill., 276, that section 3 of the act of March 1, 1854, is unconstitutional. The title of the last-named act is "An act to incorporate the Northwestern Plank Road Company." Section 3 thereof, after reciting that the corporators had theretofore organized and proceeded to prosecute the construction of the road under the void act of February 12, 1849, attempts to legalize and make valid the acts done in pursuance of such void act. The legalization of unauthorized acts cannot be regarded as germane to the subject expressed in the title.

But we see no reason why sections 1 and 2 of the act of 1854, which are literal copies of sections 21 and 22 of the act of February 12, 1849, are not constitutional. These sections are prospective and not retrospective in their character. The rights and powers conferred by them are to be exercised in the future. It appears, however, from the allegations in the bill that the corporators completed their organization under the license granted by the county commissioners' court of Cook county and obtained from that court the order consenting to the appropriation of the highway known as "Milwaukee road" and afterwards called "Milwaukee avenue" before the passage of the act of March 1, 1854; also that the company took and used such highway for the construction of the road before March 1, 1854. The bill does not aver that any of these acts were done or that any of these proceedings were taken after the passage of
116 the act of 1854, but proceeds upon the theory that they were legalized by the third section of that act. Owing to the void character of said section 3 they were not so legalized.

But by the act of February 15, 1865, which was an act to amend the charter of the Northwestern Plank Road Company, the legislature recognized the corporate existence of the company, and also

recognized the right of the company to substitute stone or gravel for plank upon so much of the road as may have been then constructed without obtaining the order of the county commissioners' court. Hence, the illegality of the corporate acts already referred to must be regarded as having been cured by the act of 1855. (1 Morawetz on Priv. Corp., sec. 20; Ill. Grand Trunk R. R. Co. *vs.* Cook, 29 Ill., 237; Goodrich *vs.* Reynolds, 31 Ill., 490.)

It is averred in the bill that the road upon which the toll-building stands was originally a public highway. The order of the county commissioners' court consenting to the appropriation of the highway and made upon the petition of three-fourths of the adjoining property-owners merely vested in said corporation "the right to use said highway for the purposes of said plank road." The public has only an easement in a highway, while the fee remains in the owners of the land. The highway continues to be such after it becomes a toll-road. (Craig *vs.* The People, 47 Ill., 487.) The public still has the right to use the road, but such use is subject to the payment of tolls. The right of the plank road company, under the acts already referred to, was the right to exact of the public a charge for the use of a mere easement or right of way over land.

How long could the company under its charter continue to
117 exercise the privilege of exacting tolls and maintaining toll-houses? Section one of the act of 1854 provides that Gray, Filkins, Richmond, and their associates are "constituted a body corporate and politic under the name and style of the Northwestern Plank Road Company, and by that name shall have perpetual succession and the right to sue and be sued, together with all other rights and ordinary powers of a corporate body." This grant of perpetual succession was an incorporation of the company for an unlimited period of time. (1 Morawetz on Priv. Corp., sec. 111 and note 3.) No limit was fixed by its charter for the duration of its corporate existence, and, so long as its existence as a corporation lasted, it could continue to exercise the powers conferred upon it; but by proceedings under the provisions of the act of 1865 the plank road company was dissolved in 1870.

The act of 1865 was not only an act to amend the charter of the company, but also an act "to authorize the sale of the franchise." Section 3 of this act provides that "the president, by the advice and direction of a majority of the stockholders, may sell to the county of Cook the franchise, the property, and immunities of said company, or to any other party or parties, and thus dissolve said company and divide the avails among the stockholders." It is quite clear that the intention of the legislature in authorizing the sale thus provided for was to dissolve the corporation and put an end to its existence. Section 5 provides that "the deed of the president of said company to the said county of Cook or to any other party purchasing, shall be a good and lawful title to the same; provided, always, that all the debts and liabilities of said company shall be paid," &c.

The bill alleges that the company accepted the amendment of its

charter as made by the act of 1865. It also appears from the
118 recitals in the deed from the president of the company to Amos J. Snell, as set forth in the bill, that at a meeting of the stockholders held in Chicago on January 5th, 1866, where all but 80 of the 5,120 shares of the stock were represented, a resolution was passed authorizing the president "to sell the plank road, toll-houses, and other property belonging to the company, with the franchise and all its rights and privileges, and give a deed of the same to the purchaser," &c. It is there averred that a sale was afterwards made to Snell, and a deed dated August 5, 1870, was executed to him by the president of the company. The deed recites that the company is entirely free from debt.

Section 4 of the act of 1865 provides that the supervisors of Cook county may purchase said franchise, property, and immunities, "and should said county fail to purchase the same any person or persons may purchase the same and thereby make the same private property." Evidently the design of the act was to give the county the right in the first place to obtain a surrender to itself of the privileges granted to the company. The right of other parties to purchase would seem to have been conditioned upon the failure of the county to do so. There is, however, no allegation in the bill that the county authorities were ever informed of the resolution of January 5, 1866, or were ever given an opportunity of making the purchase referred to in section 4. The only averment upon that subject is that the county did not purchase, but the county supervisors certainly could not be said to have failed to purchase until they were in some way made aware of the action of the stockholders, because such action was a necessary prerequisite to the right of the corporation to sell.

But if it be admitted that the company had the authority
119 to make the sale which it did make to Snell, the question arises, What effect did such sale have upon the company itself, and what rights did it confer upon the purchaser?

As the debts were all paid and there were no creditors or third persons whose rights demanded that the existence of the corporation should be continued, the company became dissolved upon the consummation of the sale and the execution of the deed. This is so, because section 3 states that the object of selling is to dissolve the company. It is also a general rule that where the charter of a corporation or its franchise to be a corporation is transferred or sold there is a surrender or abandonment of the old charter by the corporators. In the case of such sale or transfer the effect is the same as though the old corporation was dissolved and its franchise surrendered to the State.

(State of Ohio *vs.* Sherman, 22 Ohio, 411; Memphis R. R. Co. *vs.* Commissioners, 112 U. S., 609.) What rights are acquired by the transferees or purchasers?

It has been said that the essence of a corporation consists in a capacity, 1, to have perpetual succession under a special name and in an artificial form; 2, to take and grant property, contract obligations, sue and be sued by its corporate name as an individual,

and, 3, to receive and enjoy in common grants of privileges and immunities. (Thomas *vs.* Dakin, 22 Wend., 71.) The first two describe the franchises which belong to the corporators; the last, those which belong to the corporation. "A corporation is itself a franchise belonging to the members of the corporation, and a corporation, being itself a franchise, may hold other franchises as rights and franchises of the corporation." (Pierce *vs.* Emery, 32 N. H., 484.)

120 By the act of 1854 Gray, Filkins, Richmond, and their associates became a corporate body, with the right of perpetual succession, &c. This was the franchise of the corporators. By the same act the corporate body received the right to construct and maintain a toll-road and to build toll-houses and collect tolls. These were the franchises of the corporation. The former franchise—that is to say, the franchise to be a corporation—cannot be transferred without express provision of law pointing out the mode in which the transfer is to be made. (Coe *vs.* The Columbus P. & C. R. R. Co., 10 Ohio St., 372; Memphis R. R. Co. *vs.* Commissioners, *supra*.) The act of 1865 authorizes the sale of "the franchise, the property and immunities" of the plank-road company and specifies that such transfer is to be made by deed of the president. If the word "franchise" as here used is broad enough to include the franchise to be a corporation, with the power of perpetual succession, even then Snell was not thereby made a corporation under the old charter. He was merely vested with the "right to organize as a corporation" (Memphis R. R. Co. *vs.* Com'rs, *supra*); but such organization never took place. Neither he nor his heirs or representatives are claiming as the corporate successors of the plank-road company. The appellants are claiming as the heirs of Snell the individual.

"The franchise of becoming and being a corporation in its nature is incommunicable by the act of the parties and incapable of passing by assignment." (Memphis R. R. Co. *vs.* Com'rs, *supra*.) If Snell in his lifetime was the owner of such franchise by express legislative grant, he could not assign it and it could not descend to his heirs. He failed to use it for the purpose of effecting any corporate organization and it died with him. Even if this were not

121 so his failure to effect said organization within ten days after the constitution of 1870 went into effect rendered it impossible under section 2 of article 11 of that constitution to give any validity to an organization made after the lapse of such period of ten days.

If the franchises designated as those which belong to the corporation as distinguished from the corporators passed to Snell by the transfer, and if he had the right to maintain the toll-houses transferred to him and to collect the tolls therefrom, did such franchises and right pass to the appellants at his death? The second proviso of section 5 of the act of 1865 is as follows: "Provided further that the purchaser or purchasers of said franchise and road shall be bound by all the obligations said Northwestern Plank Road Company is by its charter and shall enjoy all the rights and privileges enjoyed by said company and no more." This provision is to be

strictly construed in favor of the public and against the grantee of the privileges in question. (Angell on Highways, section 357; 1 Morawetz on Priv. Corp., sec. 323; Stormfeltz *vs.* The Manor Turnpike Co., 13 Penn. St., 555.) The person who is to "enjoy all the rights and privileges enjoyed by said company" is stated to be the purchaser of the franchise and road. It is not stated that the purchaser and his heirs and assigns shall enjoy such rights and privileges. If it had been the intention of the legislature that the heirs of the purchaser should succeed to the privilege of collecting tolls and maintaining toll-gates, it would have been so specified.

The dissolution of the corporation did away with the right of perpetual succession which attached to the corporate body. By neglecting to organize a corporation with such privilege of
122 perpetual succession, if the power to do so passed to him, Snell failed to preserve the element of perpetuity; but if the right to collect tolls and maintain toll-houses descended to his heirs and by consequence became inheritable by the heirs of such heirs, then there was a continuation of the perpetuity which had been abrogated by the dissolution of the corporation. It is true that the deed made by the president of the corporation to Snell conveys to him, "his heirs, executors, administrators, and assigns," but the question is not what the language of the deed was, but what the legislature authorized to be put into the deed.

In Turnpike Co. *vs.* Illinois, 96 U. S., 63, the Supreme Court of the United States had under consideration a supplement to the charter of a turnpike company which gave to the company an additional privilege of using a bridge and dyke and erecting a toll-gate on the dyke, and where, as here, no term was expressed for the enjoyment of the privilege and no conditions were imposed for resuming or revoking it on the part of the State; and Mr. Justice Bradley there said: "It cannot be presumed that it was intended to be a perpetual grant, for the company itself had but a limited period of existence. At common law a grant to a natural person without words of inheritance creates only an estate for the life of the grantee, for he can hold the property no longer than he himself exists. * * Grants of franchises and special privileges are always to be construed most strongly against the donee and in favor of the public." It was decided in Koelle *vs.* Knecht, 99 Ill., 396, that the 13th section of our conveyance act has no application to a case like the present, where the privilege of collecting tolls is a mere charge upon an easement owned by the public.

The road certainly did not become "private property" in
123 such sense that the purchaser from the company could manage and control it in the same way and to the same extent as any private property is subject to the use and disposition of the ordinary owner, because we decided in Craig *vs.* The People, *supra*, that the owner of such a road could not close it up and prevent the public from using it. The deed to Snell conveys "all the property of said company, consisting of the charter and its amendments and franchises, the right of way, the grading, the planking, ditches, bridges, and drainages, the toll-houses, gates, teams, implements of

work, and being the plank road from the old city limits of Chicago to the nine-mile post, together with all the property, goods, and chattels of said company of whatsoever nature or description." This language, taken in connection with the allegations of the bill, conveys the impression that when the sale was made to Snell in August, 1870, the road required to be built by the original charter had not yet been constructed. The obligation imposed upon the corporation as first organized was "to construct a plank road from the city of Chicago to Oak Ridge, and from thence to Wheeling and to the north line of said county." The consideration of the contract with the State was that the whole road should be built from the city of Chicago to the north line of the county. There is nothing to show that the State ever released the company from its duty to build and maintain the whole road. It was not sufficient that it should construct a part. It is true that section 7 of the act of February 10, 1849, provides that toll may be collected from persons using so much of the road as may be completed, but the privilege of collecting tolls before completion did not excuse the company from the obligation of finally building the whole road.

124 It clearly appears from the statements in the bill that the original route of the road included the portion thereof that was sold to Snell, and that what he bought did not cover the whole extent of the original route. If it be true that the road was not yet finished when the sale was made, then Snell was bound to finish it if all the franchises of the company passed to him. The act of 1865 provides that "the purchaser of said franchise and road shall be bound by all the obligations said Northwestern Plank Road Company is by its charter." But it is not alleged in the bill that he ever finished the balance of the road, nor is it pretended that he or his representatives have ever claimed or exercised any control over any part of the road except that named in the deed.

Upon the assumption that the road was unfinished in 1870, and that as purchaser of the franchise he could have proceeded with the construction, it cannot be said that if he had the right to erect and maintain such toll-houses and toll-gates as he might deem suitable to his interests such right could have been exercised upon any other part of the road than that constructed by himself. It is distinctly averred in the bill that the Northwestern Plank Road Company had built that part of the road described in the deed to Snell and had erected thereon toll-gates and toll-houses which it deemed suitable to its interests and had maintained the toll-road, toll-gates, and toll-houses and collected "toll therefor and thereat" long before the sale to Snell. This being so, the location of the toll-gates and toll-houses had become established and the company had no power to move them or change their location. Tolls can only be collected at the legally established gates, and the public are interested in

125 the permanency of the location of the gates and entitled to the right of paying tolls at the established gates, especially when such payments have been made therefor a number of years.

By section 7 of the act of February 10, 1849, the company was authorized "to erect and maintain such toll-houses, toll-gates, and

other buildings for the accommodation and management of the said road and the travel and transport thereon as the said corporation may deem suitable to its interests." But when the company had once exercised its discretion by locating the gates, then its power was exhausted. (Griffin *vs.* Wouse, 18 John., 397; State *vs.* N. & D. Turnpike Co., 10 Conn., 157; Turnpike Society *vs.* Hosmer, 12 Conn., 361; H. & D. Turnpike Corp. *vs.* Baker, 17 Pick., 432; The People *vs.* L. & N. R. R. Co., 120 Ill., 48; Angell on Highways, sec. 360.)

When, therefore, the sale was made to Snell he took the road from the city to the nine-mile post with such toll-gates and toll-houses as were already established thereon. He had no more power to change their location than the company had at the time of his purchase. He could only enjoy the rights and privileges enjoyed by the company and no more. The company had the privilege of collecting tolls at the established gates and not elsewhere. He was bound by the obligations which had been imposed upon the company by its charter. One of those obligations was to refrain from changing the location of the toll-houses or removing them or building others at other points than those originally selected.

It is alleged in the bill that the toll-gate at the intersection of Milwaukee avenue with Fullerton avenue was erected by Snell himself "several years prior to his death," which did not occur
126 until February 8, 1888. The intersection of the two avenues was upon that part of the toll-road named in the deed. He had no right to locate the toll-gate at the place thus selected. The toll-gates already established had not only been in use for the collection of tolls for years before his purchase, but for years thereafter. His use of the gates already existing for so long a period of time before the erection of the one in controversy amounted to an acceptance of what had been done by his predecessor, even if he himself had originally had any discretion in the matter of their relocation.

But let it be admitted that the whole road was constructed by the plank-road company along the route named in the charter. If this was so, then the charter contemplated the erection of toll-gates and the collection of tolls along the line of the road from the old city limits to the north line of the county. The franchise was one and indivisible. (The People *vs.* Improvement Co., 103 Ill., 491.) The act of 1865 contemplated the sale of the whole franchise and the whole road. It is manifest that Snell only bought a part of the plank road, nine miles in length, and the franchise of using the same and collecting the tolls thereon. What became of the balance of the road? Was it abandoned or was it sold to some other purchaser? In either case there was a division of the franchise authorized to be sold as a whole by the act of 1865. It was not the design of the original charter or of the act of 1865 that there should be more than one ownership of the whole road and all its franchises. The contract between the State and the plank-road company was that the company and no one else should construct and keep in repair the whole road and in consideration thereof should collect tolls.

The contract between the State and the purchaser named in
127 the act of 1865 was that such purchaser should finish or, if

finished, should maintain and keep in repair the whole road in consideration of collecting tolls thereon. There was no contract between the State and Snell or anybody else that only a part of the road should be built or kept in repair, or that one part should be kept in repair by the county and the other part by some other owner, or that different owners should maintain and operate different parts of the road.

Therefore, upon the assumption that the whole road had been completed and was in operation on August 5, 1870, it must follow that the sale made to Snell and the deed executed to him were not in pursuance of the act of 1865 and cannot be regarded as binding upon the State.

The act of 1865 evidently intended to put the Northwestern Plank Road Company upon the same footing with plank roads organized under the general law of the State. Said road, if stone or gravel was substituted for plank, was to be "constructed so as to pass the examination of the inspectors of plank roads" in Cook county. It was to "collect the same tolls and enjoy the same privileges granted to plank-road companies by the general plank-road law." (Turney *vs.* Wilton, 36 Ill., 393.) It might collect the same penalties, fines, and damages authorized by the general law and be subject to the same penalties imposed by that law. Words of permission, if tending to promote the public benefit, are obligatory. (Boone on Corp., sec. 36; Rex *vs.* Mayor, etc., of Hastings, 1 Dowl. & R., 148.) It was promotive of the public benefit that this particular plank-road company should not enjoy any greater privileges than other plank-road companies. It accepted the provisions of the act of 1865 and made sale of its property under the last three sections of that act.

128 The words "may enjoy the same privileges," will be construed to mean "shall enjoy the same privileges."

There is nothing in the language of sections 1 and 2 of the act of 1865 which limits the provisions of those sections to the general plank-road law as it existed on February 15, 1865. The inspection was to be such as the general law might provide for in the future. The company might collect the same tolls allowed by the general law as it then was and as it might become by amendment and could enjoy the same privileges granted to plank-road companies by the general plank-road law, whether such law should remain the same or be afterwards changed. (Kugler's Appeal, 55 Penn. St., 123; McKnight *vs.* Krimmon, 22 Mo., 559.) By accepting the act of 1865 the Northwestern Plank Road Company consented that thereafter its privileges should be no more nor less than those which the legislature should award to other plank-road companies by general law. It consented thereby to accept the same restriction or enlargement which the general law might make in the privileges of other plank-road companies. When Snell made his purchase he was to enjoy the rights and privileges enjoyed by the company and no more. Therefore he also was only to have such privileges as should be granted by the general law. (R. R. Co. *vs.* Hecht, 95 U. S., 168.)

The act of March 25, 1874, already referred to, was a general act

relating to turnpikes and plank, gravel, macadamized, and other toll-roads. We have already seen that by section 12 of this general law no toll-gate can be kept or toll demanded within the corporate limits of any city. The toll-gate at the intersection of Milwaukee and Fullerton avenues is within the limits of a city.

Appellants have no right to keep it there or to demand
129 toll there. Even if the interest of Snell became invested in them as his heirs they took such interest subject to the same conditions under which their ancestor held it. He only enjoyed the same privilege as to the collection of tolls which other companies could enjoy under the general law, and the privilege of such other companies was that of collecting tolls outside of the city limits and not within such limits nor within 160 rods thereof. Section 12, as applied to the Northwestern Plank Road Company or the purchaser therefrom, cannot be regarded as a violation of its or his contract with the State in view of the acceptance of the provisions of the act of 1865.

The right to maintain the toll-gate in question is negatived by all the implications from the acts of 1849, 1854, and 1865, and by the general law and policy of this State in regard to the character and powers of incorporated cities.

The road was to be constructed "from the city of Chicago," and although this language has sometimes been construed to mean "from a point within the city," yet such cannot be its construction in the present case. The bill does not so claim, but alleges that the road was begun at the northern limit of the city as it existed from 1849 to 1854—that is to say, from North avenue. The charter of the city of Chicago at that time placed its streets entirely under the control of the city authorities. The act of February 10, 1849, authorizes the plank-road company to use State roads, and to acquire property from individuals, companies, and corporations for the construction of the road, and the act of March 1, 1851, provides for the use for such purpose of highways, with the permission of the county and the property-owners; but nowhere in any of the acts is any provision made for locating or
130 constructing the road through any incorporated city or town.

An act passed in February, 1851, amending the general plank-road law of 1849, provided that no street of a city should be used for a plank road without the consent of the city authorities. An act approved February 21, 1859, providing "for constructing, maintaining, and keeping in repair plank, gravel, or macadamized roads or pikes by a general law" (Laws of 1859, page 151), which act was in force when the act of February 15, 1865, was passed, required an agreement with the corporate authorities of a city before any plank road could be located upon any street of such city. The entire absence of any of these provisions from the acts which constitute the charter now under consideration, together with the mention of only highways, State roads, and private property in such charter, and the complete silence therein as to streets, leads to the conclusion that the contemplated road was intended to be one that should lie entirely outside of the limits of any city. (Regina *vs.*

Cottle, 3 Eng. Law & Eq. 174; Stormfelz *vs.* Manor Turnpike Co., *supra*; S. & H. Turnpike Co. *vs.* Lyons, 48 Conn., 151; Charles River Bridge *vs.* Warren Bridge, 11 Peters, 119; Snell *vs.* Bursh, 123 Ill., 151; Northwestern Fertilizing Co. *vs.* Hyde Park, 97 U. S., 659; O. & M. R. R. Co. *vs.* McClelland, 25 Ill., 140.)

The policy of this State has always been to give the control of the streets, both as to repairs and general management, to the corporate authorities of the city through which such streets run. The fee of the streets is vested in the city for the use of the public, and their free and untrammeled use belongs to the public. "Cities are bodies politic and corporate established by law not only to regulate and administer their own local affairs, but to assist in the civil
131 government of the country." (1 Dillon on Corp., sec. 19, 36.) It can hardly be supposed that the legislature intended to barter away the right of the State to carry on the government through the organization and extension of cities by making contracts with toll-road companies for the perpetual control of the public highways. By the natural growth of the country many of such highways must become, in part at least, streets of cities, and when they are so absorbed by the increase of population they must be subject to the control of the municipal authorities. Any other result would lead to inextricable confusion. One street cannot be under the management of two distinct governing powers.

The constitutions of 1848 and of 1870 have both been interpreted by this court to mean that the legislature has no power to grant to any other than the corporate authorities of a city the right to assess and collect taxes, and that such taxation must be for corporate purposes, and that "the corporate authorities" are those who are either directly elected by the people of the municipality or appointed in some mode, to which they have given their consent. (Wetherell *vs.* Divine, 116 Ill., 631.) Whatever may be the rule in other States, it is the settled doctrine of this State, and was the doctrine of the State when the act of 1865 was accepted by the plank-road company, that a statute conferring upon the commissioners of highways the authority to maintain roads within their towns will not be so construed as to authorize the exercise of such authority over highways within the limits of a city, and a tax levied by such commissioners for the repair or improvement of a public road or street lying within the limits of a city is illegal. (Town of Ottawa *vs.* Walker, 21 Ill., 605; Conrs *vs.* Baumgarten, 11 Ill., 254; People *vs.* La Salle County, 111 Ill., 527; People *vs.* C. & N. W. R. R. Co. 118 Ill., 529.) The same principle was applicable when the
132 highways were under control of the counties as when they were under the control of towns. Counties, under the constitution of 1848, had no more right than towns to maintain a road within the limits of a city or to levy taxes upon the people of a city for the maintenance of a road or street therein.

When a toll-road was established the town or county surrendered to the toll-road company the duty of maintaining the highway and keeping it in repair. The toll company was substituted for that purpose and to that extent for the authorities of the town or

county. Whereas theretofore the county or town levied a tax upon the people, payable either in money or labor, to keep the highway in repair; thereafter the toll-road company required the people to pay tolls for the same purpose. The exaction of tolls from the people was in the nature of a burden or tax just the same as had been the case when the town or county exacted money or labor. Now, it will not be contended, when a city is enlarged so as to include within its boundaries a part of a highway and so as to make such part of the highway a part of the street, with a fee-simple title thereto in the city, that the authority of the town or county over the portion of the road thus taken into the city will continue to exist any longer. It will be admitted that thereafter the city will have entire control. Why does not the same result follow when the part of the highway so added to the city has been under the management of a toll-road company? Such company is not a corporate authority of the city selected by the people thereof. It levies upon the people an exaction in the nature of a tax to which they have never given their consent. It imposes a charge upon them, without their consent, for the purpose of keeping in
133 repair one of their own streets, infrusted by the law to the mangagement of their own officials.

Any statute whose application leads to such a result as is thus indicated contravenes the spirit, if not the letter, of section 5 of article 9 of the constitution of 1848 and of section 9 of article 9 of the constitution of 1870, as those sections have been interpreted by this court. The legislature had no power in 1849 or 1854 or 1865 to pass a special charter, which could be so used or applied, under a given state of facts, as to violate the fundamental law of the State. The State could not be bound by a contract whose enforcement, under new conditions, would be forbidden by the constitution. It follows that the plank-road company and its vendee must be held to have accepted the charter granted to them upon the implied condition and under the implied understanding that the right to use the highway for a toll-road should give way as to such part thereof as should become subjected, by the growth of the State and its increase in population, to the control and government of an incorporated city. The State had authorized the company to use the highway by permission of the county upon petition of three-fourths of the adjoining property-owners; but under the requirements of the organic law that use could not continue after the authority of an incorporated city had become substituted for that of the county, and the title of the adjoining property-owners to the land subject to the easement of the highway had become vested in the incorporated municipality of a city.

We are, therefore, of the opinion that the common council of the city of Chicago had the right to direct its superintendent of public works to remove the toll-gate in question. The decree of the superior court is affirmed.

Affirmed.

134 Be it remembered, to wit, on the said 14th day of May, A. D. 1890, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

HENRIETTA SNELL and ALBERT J. Stone, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased,

vs.

THE CITY OF CHICAGO and GEORGE B. Swift, Commissioner of the Department of Public Works of City of Chicago.

Appeal from Superior Court, Cook County.

And now, on this day, this cause having been argued by counsel and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the decree aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellees recover of and from the said appellants their costs by them in this behalf expended, and that they have execution therefor, except as to said administrators, and as to said administrators that the same be paid in due course of administration.

135 In the Supreme Court of Illinois, Northern Grand Division, March Term, A. D. 1890.

HENRIETTA SNELL and ALBERT J. Stone, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased, Appellants,

vs.

THE CITY OF, CHICAGO *et al.*, Appellees.

Appeal from Superior Court, Cook County.

To the honorable the Chief Justice and justices of the Supreme Court of the United States:

The petition of Henrietta Snell and Albert J. Stone, administra-

tors of the estate of Amos J. Snell, deceased; Henrietta Snell, widow, and Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and heirs-at-law of Amos J. Snell, deceased, respectfully represents that these petitioners, complainants, filed their bill in chancery in the superior court of Cook county December 21, 1888, against The City of Chicago and the Commissioner of the Department of Public Works of the City of Chicago, defendants, for an injunction to restrain and prohibit the defendants from the threatened removal and destruction of the toll-gate and toll-house of the complainants (the petitioners) on Milwaukee avenue, at or near the intersection therewith of Fullerton avenue, outside the city limits before extension, but brought within the limits of the
136 city of Chicago as recently extended belonging to complainants' toll-road, commonly called the northwestern plank road.

The defendants interposed a general demurrer to the bill, which the superior court sustained, and the court thereupon rendered a decree that the bill be dismissed for want of equity. The complainants appealed to the supreme court of Illinois from such decree, but the decree of the superior court was affirmed by the supreme court of the State.

This petition is now presented to your honors for a writ of error from the Supreme Court of the United States to the State supreme court to bring up the record of the supreme court of the State of Illinois for review.

The petitioners present herewith a certified copy of the record of the supreme court of the State of Illinois by which it appears that a Federal question arises to review which the jurisdiction of the Supreme Court of the United States is properly invoked.

In the bill the petitioners, complainants, claim under an act of the General Assembly of Illinois granting a charter to the Northwestern Plank Road Company, approved March 1, 1854, and an act approved February 15, 1865, to amend the charter of the corporation and to authorize a sale of its property and franchises, and a sale and conveyance thereunder to Amos J. Snell, his heirs, executors, administrators, made on the 5th day of August, 1870, said Snell having died intestate in the month of February, 1888.

It is shown by the bill, the allegations of which are full and complete, that the toll-house and toll-gate in question were erected and in use by said Amos J. Snell and subsequently by the com-
137 plainants long prior to the extension of the city limits of Chicago, they claiming the vested right to continue to maintain and use the same under this charter, statute, and conveyance, and that the threatened removal thereof by the city and its officers would be and constitute an act of mere usurpation and confiscation of these vested rights of the complainants.

The bill alleges that in accordance with and in pursuance of said act he, the said Amos J. Snell, in his lifetime, on the 5th day of August, 1870, did purchase of and from the said corporation all of its rights and title in and to said road, the franchise and property and immunities of said company, and that Thomas Richmond, who was

then and there the president of the said company, by the advice and direction of a majority of the stockholders of said corporation, as in the said last-mentioned act provided, as such president, did then and there sell and convey to the said Amos J. Snell the said road, the franchise, the property, and immunities of said company for the consideration of $20,000, which the said Amos J. Snell then and there paid to the president and to said corporation, and the said president pursuant thereto then and there executed, acknowledged, and delivered to the said Amos J. Snell a deed therefor in due form which is set out in the bill.

That by virtue of the premises and under the deed and grant aforesaid the said Amos J. Snell was and continued from the time of such conveyance until his death the absolute and exclusive owner of the said property in the said deed mentioned, including the said charter and its amendments, the said franchise, the right of way, the grading, planking, ditches, bridges, and drainages, toll-
138 houses, toll-gates, and so forth, being the road and property in said deed mentioned, and that ever since his said purchase of said plank-road property and franchise the said Amos J. Snell, until his death, as herein mentioned, was the sole owner thereof, in the actual and exclusive possession, control, and enjoyment thereof, and the undisturbed exercise of all the franchise, rights, and powers which were conferred upon said corporation by said enactments.

That by virtue of the premises and said purchase by said Amos J. Snell from said Northwestern Plank Road Company and the deed to him by the said corporation he, said Amos J. Snell, acquired, had, and possessed the franchise, powers, and privileges of said corporation under its said charter to erect, operate, and maintain all such toll-gates, toll-houses, and other buildings for the accommodation and management of said toll-road and the travel and transport thereon as he should deem suitable to his interests.

That the said Snell in his lifetime and several years prior to his death and long prior to the extension of the limits of the city of Chicago west of or beyond Western avenue, so as to embrace any portion of said Milwaukee avenue lying or extending westwardly therefrom, and prior to the time when the limits of said city of Chicago were extended to embrace or did embrace that portion of the northwest quarter of section 36, township 40 north, of range 13 east, of the 3rd principal meridian, in said county, occupied or traversed by said Milwaukee avenue—that is to say, said toll-road being the portion of said Milwaukee avenue lying between Fullerton avenue and California avenue—for the accommodation and management of said toll-road and the travel and transport thereon and
139 which he deemed suitable to his interests as the owner of said road, franchise, powers, and immunities as aforesaid, erected a toll-gate and toll-house on said toll-road at the intersection of said Milwaukee avenue, being said toll-road as aforesaid, with said Fullerton avenue, which said toll-house *which* the defendants hereinafter named have designated and so designate as the toll-office of Mr. Snell, located on the southeast corner of Milwaukee

avenue and Fullerton avenue, also as the toll-gate building on Milwaukee avenue south of Fullerton avenue, and that said Snell, from and after the erection of said gate and building as aforesaid, for and during the period up to his death, operated and maintained said toll-gate and toll-house, as he lawfully might by virtue of the premises, for the accommodation and management of said toll-road and the travel and transport thereon as aforesaid, which erection, maintaining, and operating of said gate and toll-house *was* deemed by said Snell suitable to his interests, and which were and have been suitable and necessary for his interests in the management of said road; that without said gate and toll-house large sums of money would have been lost to the said Snell by reason of the fact that large numbers of persons traveling upon said toll-road could and would shun and avoid all other toll-gates upon said road by passing thereon and therefrom by way of said Fullerton avenue in passing to and from the city of Chicago; that in order to secure tolls for the use of said road to which he was during all that time entitled he, the said Snell, erected, maintained, and operated the said toll-gate and toll-house at the intersection of said toll-road with Fullerton avenue as aforesaid, and as he lawfully might do as aforesaid.

That ever since the death of said Amos J. Snell the com-
140 plainants as his legal and personal representatives have maintained and operated and still maintain and operate the said toll-gate and toll-house for the purpose of collecting tolls thereat, payable by all persons passing over said portion of said toll-road, as complainants, as they are advised and believe, lawfully might and may do by reason of the premises; that if the threat and purpose of the defendants to remove said toll-gate and toll-house or toll-gate building as the defendants designate the same as aforesaid shall be carried out and performed it will cause complainant great loss and irreparable injury, and they will be subjected to a multiplicity of suits against all such persons as would thereby be enabled to and would travel upon and over that portion of said toll-road lying and being between Fullerton avenue and the easterly terminus of said toll-road at the intersection of Milwaukee avenue and North avenue, now within the present limits of said city of Chicago, without being compelled to pay on account of such removal of said toll-gate and toll-house if the defendants are not prohibited and enjoined from carrying out their said threat and purpose, and they would also be subjected to the necessity of instituting a multiplicity of suits against the defendants herein for causing loss to the complainants of such tolls as the complainants would be entitled to collect and which the complainants could not otherwise collect by reason of such wrongful removal of said toll-gate and toll-house or toll-gate building by the defendants.

That the rights of the Northwestern Plank Road Company under and by virtue of its charter, pursuant to the said several enactments
in respect to the said toll-road and also to all the franchise,
141 privilege, and power to erect, operate, and maintain such toll-gates, toll-houses, and other buildings on and along the

line of said road as the said corporation should deem suitable to its interests and for the accommodation and management of said toll-road and the travel and transport thereon, had been acquired by and become vested in said corporation by reason of the premises many years before the municipal authorities and government of the city of Chicago acquired or obtained any jurisdiction, power, or authority whatever over or concerning any of the territory through or over which the said toll-road passes, and that likewise the said Amos J. Snell upon and after his purchase and conveyance from said corporation succeeded to, possessed, and had all the franchise, privilege, and power of the corporation and which had been acquired by and become vested in said corporation, and that thereupon and by virtue of said purchase and conveyance same became and were vested rights in the said Amos J. Snell, and this while the territory traversed by all of said toll-road lying west of said Western avenue and every part of it was not embraced within the territorial limits of said city of Chicago nor subject to any control nor under the jurisdiction of the municipal authorities or government of said city.

That the erection, operation, and maintaining of said toll-gate and toll-house so as aforesaid designated by the defendants as the toll-gate building on Milwaukee avenue, south of Fullerton avenue, by the said Amos J. Snell and the operating and maintaining thereof by the complainants since his death were and have been strictly in the exercise of the rights in that behalf conferred upon and vested in said Amos J. Snell by virtue of the premises
142 and the complainants as his legal and personal representatives, and the same are not now and never have been subject to any control by or interference on the part of the city of Chicago or any of its officers, agents, or servants; and they further charge that the threatened removal of said toll-gate and toll-house, designated as the toll-gate building, by the defendants, as hereinafter stated, is usurpation and in direct violation and disregard of the said vested rights so acquired by the said corporation and which became vested in the said Amos J. Snell and belong to and are vested in complainants as his legal and personal representatives.

That recently the territorial or corporate limits of the city of Chicago have been extended westwardly from said Western avenue to embrace and include the territory through or over which passes the portion of said Milwaukee avenue which constitutes that part of said toll-road lying and being east or southeasterly from said Fullerton avenue, but such extension of the limits of the city and the municipal authority over such extended limits has not, would not, and cannot abridge, affect, or impair any right, privilege, power, or franchise which the said Northwestern Plank Road Company acquired as aforesaid, and which were succeeded to by said Amos J. Snell under and by virtue of said purchase and deed and by complainants as his legal and personal representatives as aforesaid, nor confer upon said city of any of its officers, agents, or servants the right or power to remove the said gate and toll-house or any toll-gate, toll-house, or other building which had been so, as

aforesaid, erected, operated, and maintained for the accommodation and management of said toll-road and the travel and transport thereon prior to any extension of the limits of said city to include the same.

143 . That the Nort-western Plank Road Company until said purchase and conveyance from it to said Amos J. Snell, from and after his purchase until his death as aforesaid, and the complainants, as they lawfully might and may do, continue to collect tolls as allowed by law for the travel and transport of all such persons as pass to and fro over and along said toll-road, including that portion thereof which traverses territory now lying within the corporate limits of said city of Chicago; and the complainants further charge that all extensions of the corporate limits of said city to include territory traversed by said toll-road were made subsequent to the conferring of the right to collect tolls thereon as aforesaid under and by virtue of said enactment, and that no subsequent extension of the corporate limits of said city could in any manner or to any extent abridge, affect, or impair the then existing right of the owners or owner of said toll-road and of the franchise belonging or pertaining thereto to the free and undisturbed collection of such tolls or the maintaining and operating of said toll-gates, toll-houses, and of other buildings as aforesaid for the accommodation and management of said toll-road, including said toll-gate building which the defendants wrongfully threaten to remove as aforesaid.

The defendants contended and claimed that the extension of the city limits, under an act of the legislature approved April 25, 1889, and under section 12 of the act approved March 25, 1874 (chapter 138, Rev. Statutes of Illinois), which enacts that "No toll-gate shall be erected or kept or toll demanded within the corporate limits of any incorporated city — within one hundred and sixty rods of

144 such limits," the right to maintain the toll house and gate in questions, or, indeed, any toll house or gate within extended city limits, which embraces this entire toll-road, was abrogated. In other words, by the operation of these subsequently enacted statutes the entire property and franchises claimed by the complainants in this cause were confiscated. This claim was sustained by the supreme court of this State and the decree of the court below dismissing the bill for want of equity was affirmed. By reference to the opinion of the supreme court in this case (which under the statute is a part of the record) it will be seen that such is the judgment and ruling of that court. The first two paragraphs of this opinion are as follows:

"Under recent acts of the legislature a large area of new territory has been annexed to the city of Chicago, so as greatly to extend its boundaries. A portion of the highway known as Milwaukee road, upon which the toll-gate and toll-house are located, was outside of the city limits prior to such annexation, but thereafter and by reason of the enlargement of the city the portion in question was taken into the city—is now a part of the street called Milwaukee avenue. The effect of this change upon the rights of the plank-

road company or its successors is the subject presented for consideration.

"Section 12 of the act of March 25, 1874, 'to revise the law in relation to toll-roads' (Rev. Stat., chap. 138), provides that 'no toll-gate shall be erected or kept or toll demanded within the corporate limits of any incorporated city or within one hundred and sixty rods of such limits.' Can this section be enforced against the appellants so as to compel them to desist from keeping a toll-gate
145 and demanding toll at the intersection of Milwaukee and Fullerton avenues, in the city of Chicago? Is there a contract existing between the State and appellants which relieves them from the duty of obeying this requirement?"

The opinion proceeds to affirm the proposition that sec. 12 of the act of 1874 can be enforced against the complainants so as to compel them to desist from maintaining the toll house and gate in question and from taking tolls thereat, because this toll-road and toll house and gate were taken into the city by the extension of its limits under the act of 1889, and concludes as follows:

"We are, therefore, of the opinion that the common council of the city of Chicago had the right to direct its superintendent of public works to remove the toll-gate in question. The decree of the superior court is affirmed."

So that it seems clear from this record that not only a Federal question arose, but was the controlling and only question upon which the case turned, and that under the law as already settled by the U. S. Supreme Court a writ of error should be allowed.

The complainants claim and insist that the judgment of the State courts thus construing the chartered rights of complainants is in violation of that clause of the first section of the fourteenth amendment of the Federal Constitution which declares that no State shall deprive any person of life, liberty, or property without due process of law, and of the tenth section of the first article of that Constitution, which prohibits any State from passing any *ex post facto* law
or law impairing the obligation of contracts. It is for the
146 Federal *ral* court to determine for themselves whether the complainants in this bill are the owners of the franchise formerly enjoyed by the Northwestern Plank Road Company and whether it be such a franchise that it cannot be destroyed or seriously impaired by subjecting it to the provisions of the act of 1889, under which the city limits were extended, and this 12th section of the act of 1874 without violating the guarantees afforded by the Constitution of the United States, and in so determining this court will place its own construction, not only upon the legislative grant and legislative authority afforded by the act of 1854, chartering the Nort-western Plank Road Company, and the act of 1865, amending this charter and authorizing the sale of its franchise, but also upon the deed of conveyance under which the company assumed to sell to Mr. Snell.

The petitioners respectfully submit herewith a brief of points and authorities relied on by them in support of this application for a

writ of error in this cause, and to which they respectfully ask the attention and consideration of the court.

The premises considered, therefore, these petitioners respectfully pray that a writ of error be granted, and that the record of the supreme court of the State of Illinois may be required to be brought up before your honors for a review of the same according to the statute and the procedure of this court, and that such further order may be taken as shall be agreeable to law and as justice shall require; and they will ever pray, etc.

FRANK J. CRAWFORD,
SIDNEY SMITH,
For Petitioners.

147 Writ of error allowed, the plaintiffs in error to execute bond for costs in the penalty of four hundred dollars, conditioned as required by law.

This June 23d, 1890.

JOHN M. HARLAN,
Circuit Justice.

(Endorsed:) Filed July 7, 1890. A. H. Taylor, clerk.

148 Know all men by these presents that we, Henrietta Snell and Albert J. Stone, as principals, and John J. Badenoch, as surety, are held and firmly bound unto the City of Chicago and the Commissioner of the Department of Public Works of the City of Chicago in the full sum of four hundred dollars, to be paid to the said The City of Chicago and the Commissioner of the Department of Public Works of the City of Chicago, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23rd day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas at a term of the supreme court of the State of Illinois, in a suit depending in said court between Henrietta Snell and Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, and Henrietta Snell, Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, children and heirs-at-law of Amos J. Snell, deceased, appellants, a judgment was rendered against the said appellants, affirming the decree of the superior court of Cook county, in said State of Illinois, in said suit, and the said appellants, now plaintiffs in error in the Supreme Court of the United States in the above-mentioned suit, having obtained a writ of error to said supreme court of Illinois and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Chicago and the Commissioner of the Department of Public Works of said City of Chicago, citing and admonishing them to be and appear at a Supreme Court of
149 the United States to be holden at Washington the second Monday of October next;

Now, the condition of the above obligation is such that if the said plaintiffs in error shall prosecute the said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRIETTA SNELL. [SEAL.]
ALBERT J. STONE. [SEAL.]
JOHN J. BADENOCH. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved by—

——— ———.

Security is ample and good.

WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed July 7, 1890. A. H. Taylor, clerk.

150 In the Supreme Court of the United States.

HENRIETTA SNELL and ALBERT J. STONE, Administrators of the Estate of Amos J. Snell, Deceased; Henrietta Snell, Widow; Albert J. Snell, Grace S. Coffin, Alice E. McCrea, and Mary S. Stone, Children and Heirs-at-law of Amos J. Snell, Deceased, Plaintiffs in Error.	Error to the Supreme Court of the State of Illinois. Assignment of Errors.
vs.	
THE CITY OF CHICAGO and THE COMMISSIONER of the Department of Public Works of the City of Chicago, Defendants in Error.	

Of the October term, in the year of our Lord one thousand eight hundred and ninety.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said plaintiffs in error, by Frank J. Crawford, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in
151 this, to wit:

The judgment herein of the supreme court of the State of Illinois affirming the decree of the superior court of Cook county, Illinois, is erroneous, because—

1st. The act of the General Assembly of the State of Illinois providing for the annexation of territory to cities, &c., approved and in force April 25th, 1889, and the twelfth section of the act of said General Assembly to revise the law in relation to toll-roads, approved March 25th, 1874, and the city ordinance under which the com-

missioner of public works acted, as construed by the said supreme court and applied to and enforced against the vested, chartered, and contract rights of the said plaintiffs in error, are and each of them is in violation of that part of section ten of article one of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of contracts, and also in violation of that part of section one of the fourteenth amendment of said Constitution prohibiting any State from making or enforcing any law which shall deprive any person of property without due process of law. Said judgment of said supreme court should therefore have reversed said decree of said superior court as erroneous and contrary to law and equity.

2nd. The said decree of said superior court and the said judgment of said supreme court are erroneous because based upon
152 statutes enacted by the General Assembly of the State of Illinois and an ordinance of the city of Chicago, which are and each of them is in violation of the Constitution of the United States, and therefore null and void.

And the said plaintiffs in error therefore pray that the said judgment of said supreme court of the State of Illinois be reversed, &c., by this court.

FRANK J. CRAWFORD,
For Plaintiffs in Error.

Endorsed on cover: Case No. 14,256. Illinois supreme court. No. 242. Henrietta Snell & Albert J. Stone, administrators of the estate of Amos J. Snell, deceased, *et al.*, plaintiffs in error, *vs.* The City of Chicago and The Commissioner of the Department of Public Works of the City of Chicago. Filed October 13, 1890.

Office Supreme Court U. S.
FILED.
JAN 4 1894
JAMES H. MCKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

HENRIETTA SNELL AND ALBERT J. STONE, ADMINISTRATORS OF THE ESTATE OF AMOS J. SNELL, DECEASED, HENRIETTA SNELL, WIDOW, AND ALBERT J. SNELL AND OTHERS, CHILDREN AND HEIRS AT LAW OF SAID AMOS J. SNELL, DECEASED,

Plaintiffs in Error,

vs.

THE CITY OF CHICAGO ET AL.,

Defendants in Error.

Error to the Supreme Court of the State of Illinois.

Brief for Plaintiffs in Error.

FRANK J. CRAWFORD,
For Plaintiffs in Error.

SIDNEY SMITH,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES.

HENRIETTA SNELL AND ALBERT J. STONE, ADMINISTRATORS OF THE ESTATE OF AMOS J. SNELL, DECEASED, HENRIETTA SNELL, WIDOW, AND ALBERT J. SNELL AND OTHERS, CHILDREN AND HEIRS AT LAW OF SAID AMOS J. SNELL, DECEASED,
Plaintiffs in Error,
vs.
THE CITY OF CHICAGO ET AL.,
Defendants in Error.

Error to the Supreme Court of the State of Illinois.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

On the 21st day of December, 1888, the plaintiffs in error filed their bill of complaint in the Superior Court of Cook County, Illinois, against the defendants in error praying an injunction to restrain them, their officers and agents, from a threatened removal and destruction of a toll gate and toll house of complainants on Milwaukee avenue, south of, and near its intersection with Fullerton avenue, and formerly situated outside of, but subsequently within the limits of the city of Chicago as extended under and by authority of an act of the General Assembly of the State of Illinois, approved and in force April 25, 1889; and from interfering with the use thereof by complainants for the collection of tolls upon their toll road. A preliminary injunction was granted.

Note. The City limits were so extended under Act in force July 1, 1872, and not under Act of 1889 as erroneously stated on page 1 ante. See Starr & Curtis Stat. Ill., p 515, and Laws of Ill., 1871-2, p 264. Ordinance annexing to city territory in question, passed May 16, 1887.

The defendants interposed a general demurrer and also moved to dissolve the injunction on the face of this bill. The cause was heard in the Superior Court on this demurrer and motion to dissolve. The court sustained the demurrer and rendered a final decree dismissing the bill for want of equity. From this decree the plaintiffs in error appealed to the Supreme Court of the State of Illinois where the decree of the Superior Court was affirmed, and the record is now before this court by writ of error to the Illinois Supreme Court. The rights of the plaintiffs in error are based upon a special charter granted to the Northwestern Plank Road Company by act of the General Assembly of the State of Illinois, approved March 1, 1854, and a subsequent act to amend this charter and authorizing the sale of the franchise, property and immunities of the company approved February 15, 1865, and a deed of conveyance of the same to Amos J. Snell in his lifetime. These statutes and this conveyance are set forth at large in the bill, as also are sections 4 and 7 to 19, inclusive, of an act to incorporate the Southwestern Plank Road Company, approved February 12, 1849, which are engrafted into this act of 1854 by reference and adoption, and which prescribe and define a large portion of the powers, privileges, rights and duties of this Northwestern Plank Road Company.

There had been an attempt to charter this company by the 21st, 22d and 23d sections of an act to construct a plank road from Oswego, Kendall county, to the Indiana State line by way of Joliet, approved February 12, 1849, and the corporators in good faith acted under this supposed charter; but it being defective, because not expressed in the title to the act, etc., as required by the Constitution of 1848, this act of 1854 is on its face and as recited by its preamble in the nature of a curative act. It recites the former attempted charter and proceeds to charter this company under a proper title, and among other things, re-enacts these three sections, and confirms acts of the corporators done thereunder in good faith. This charter of 1854, among other things, enacts "that John Gray, Joseph Filkins, Thomas

Richmond and their associates to whom was granted by the County Commissioners' Court of Cook County a license to construct a plank road from the city of Chicago to Oak Ridge and from thence to Wheeling and to the north line of said county, be and they are hereby constituted a body corporate and politic under the name and style of the Northwestern Plank Road Company, and by that name shall have perpetual succession and the right to sue and be sued together with all other rights and ordinary powers of a corporate body." That "the said corporation is authorized and shall have power to erect and maintain such toll-houses, toll-gates and other buildings for the accommodation and management of the said road, and the travel and transportation thereon as the said company may deem suitable to its interests, and may demand, collect or receive of and from any and every person using said road, or so much thereof as may be completed, toll to be regulated by the directors of said corporation, but not to exceed" certain rates per mile therein enumerated.

This act of 1865 is entitled "An act to amend the charter of the Northwestern Plank Road Company in the County of Cook, and to authorize the sale of the franchises." It authorizes this company "to substitute stone or gravel in place of plank upon said road or any part thereof provided the same shall be of equal width of the plank track and be constructed so as to pass the examination of the inspectors of plank roads in said county." It enacts that "The said company may collect the same tolls and enjoy the same privileges granted to plank road companies by the general plank road law, and it may collect the same penalties, fines and damages for the violations of its rights or damage to its property that is authorized by said general law, and be subject to the same penalties that law imposes for the abuse of travelers or the community." That "The president, by the advice and direction of a majority of the stockholders, may sell to the County of Cook, the franchise, the property and immunities of said company, or to any other party or parties, and thus dissolve said company and divide the avails

among the stockholders." That "The Board of Supervisor of Cook County may purchase said franchise, property and immunities, and upon the order of said board, the clerk of said county shall proceed to purchase the same, and should said county fail to purchase the same, any person or persons may purchase the same and thereby make the same private property." That "The deed of the president of the said company to the said County of Cook, or to any other party purchasing, shall be a good and lawful title to the same provided always that all the debts and liabilities of said company shall be paid; provided further that the purchaser or purchasers of said franchise and road shall be bound by all the obligations of said Northwestern Plank Road Company by its charter, and shall enjoy all the rights and privileges enjoyed by said company and no more."

The bill alleges that the said corporation was duly organized under its charter: that it obtained the right to use Milwaukee avenue from the county authorities pursuant to law, and constructed a plank road thereon with suitable toll houses and toll gates pursuant to the power of its charter; and from the time of its organization said company exercised its franchise and operated its toll road and performed all acts and things required by its charter, and that for more than twenty years it was in possession of and operated its toll road upon said Milwaukee avenue under its charter. That it accepted the amendments of its charter under the said amendatory act of 1865. That the County of Cook having failed to purchase, said Amos J. Snell did, on the 5th day of August, 1870, purchase; and set forth the conveyance by the president, which recites that the company being entirely free from debt, the stockholders, at a meeting held in January, 1866, resolved to sell, and authorized its president to sell and convey, and therefore for and in consideration of $20,000 received, sells, transfers, conveys and sets over to said Amos J. Snell, "his heirs, executors, administrators and assigns, all the property of said company consisting of the charter, and its amendments and franchises, the right of way, the grading, the planking, ditches, bridges

and drainages, the toll houses, gates, teams, implements of work, and being the plank road from the old city limits of Chicago aforesaid to the nine mile post, together with all of the property, goods and chattels of said company, of whatsoever nature or description. To have and to hold unto the said Amos J. Snell, his heirs, executors, administrators and assigns forever." That said Snell, from the time of such conveyance until his death was in the actual and exclusive possession, control and enjoyment thereof, and the undisturbed exercise of all the franchise rights and powers which were conferred upon said corporation. That Snell died intestate in February, 1888, and that since his death the complainants, as his legal representatives, have maintained and operated for the collection of tolls and in the exercise of said franchise the toll house and toll gate in question. That Snell, after his purchase, and years prior to his death, and long prior to the extension of the city limits to include them, erected the toll house and gate in question for use in collecting tolls; that the same were and are suitable and necessary for the collection of tolls and that without the same large sums of legal tolls would be lost as travelers could and would shun and avoid all other gates by passing around by way of Fullerton avenue.

That in December, 1888, the City Council of Chicago passed a resolution directing its Commissioner of Public Works to remove the said toll gate and toll house, and thereupon said commissioner notified complainants to remove the same within five days. This notice is set forth in the bill and also the city ordinance under which the commissioner assumed to act and to enforce against the plaintiffs in error, and which is as follows:

"The owner of any building, fence, porch, steps, gallery or other obstruction, now standing or which may hereafter be erected or placed upon any street, alley or sidewalk or public ground within this city, or which may be left standing upon any new street that has been or may hereafter be opened shall remove the same within such reasonable time, not exceeding thirty nor less than three days, as he shall be

required to do by a notice signed by the Commissioner of Public Works, under a penalty of not less than twenty-five dollars, nor more than one hundred dollars, and a further penalty of ten dollars for every day the same shall so remain."

That the said city and said commissioner threaten and intend to remove the same and will do so unless restrained. That if permitted to execute this threat great and irreparable damage to complainants will result.

The bill alleges and insists that long before the City of Chicago by the extention of its limits acquired jurisdiction over any portion of the territory traversed by this toll road, the said Northwestern Plank Road Company, and subsequently said Snell by his purchase, and complainants after his death, acquired and were in possession of the vested right to the franchises and property of said corporation and the right to maintain and operate the toll house and toll gate in question, and always have and still claim the right to maintain the same by virtue of said franchise. That the City of Chicago threatens to remove the same in usurpation and direct violation and disregard of the vested rights of complainants in the franchise and property formerly possessed by the said Northwestern Plank Road Company, and that the subsequent extension of said city limits can not abridge, affect, or impair any right, privilege, power or franchise which said Northwestern Plank Road Company acquired under its charter and to which Snell succeeded under and by virtue of his purchase, and complainants, as his representatives, to the free and undisturbed maintenance of said toll house and gate for the collection of tolls.

The opinion of the Supreme Court of Illinois is as much a part of this record as are the pleadings. See *Gross* v. *Mortgage Co.*, 108 U. S. Reps. 477.

It appears by this opinion that the affirmance of the decree of the Superior Court is placed upon the ground that the recent extension of the city limits of Chicago by authority of an act of the General Assembly of the State of Illinois,

approved and in force April 25, 1889, having brought the toll house and toll gate in question within these limits, the 12th section of the act of General Assembly to revise the law in relation to toll roads, approved March 25, 1874, prohibiting the erection or maintenance of any toll gate or the demanding of tolls within the limits of any incorporated city or within one hundred and sixty rods of such limits, was made applicable to and enforcible against the toll road, toll house and gate in question and the rights and franchises of complainants in the premises. In verification of this we quote from the opinion as follows:

"Under recent acts of the legislature a large area of territory has been annexed to the city of Chicago so as greatly to extend its boundaries. A portion of the highway known as Milwaukee road upon which the toll gate and toll house in question are located was outside of the city limits prior to such annexation, but thereafter and by reason of the enlargement of the city, the portion in question was taken into the city and is now a part of the street called Milwaukee avenue. The effect of this change upon the rights of the plank road company or its successors is the subject presented for consideration.

"Section 12 of the act of March 25, 1874, 'To revise the law in relation to toll roads,' Revised Statutes, Chap. 138, provides that 'no toll gate shall be erected or kept, or toll demanded within the corporate limits of any incorporated city, or within one hundred and sixty rods of such limits.' Can this section be enforced against the appellants so as to compel them to desist from keeping a toll gate and demanding toll at the intersection of Milwaukee and Fullerton avenues in the city of Chicago? Is there a contract existing between the State and the appellants which relieves them from the duty of obeying this requirement?" * * *

Again,

"The act of March 25, 1874, already referred to, was a general act relating to turnpikes, and plank, gravel, macadamized and other toll roads. We have seen that by section 12, of this general law, no toll gate can be kept or toll de-

manded within the corporate limits of any city. The toll gate at the intersection of Milwaukee and Fullerton avenues is within the limits of the city. Appellants have no right to keep it there, or to demand toll there. Even if the interest of Snell became invested in them as his heirs, they took such interest subject to the same conditions under which their ancestor held it. He only enjoyed the same privileges as to the collection of tolls which other companies could enjoy under the general law, and the privilege of such other companies was that of collecting tolls outside of the city limits, and not within such limits or within one hundred and sixty rods thereof. Section 12, as applied to the Northwestern Plank Road Company, or the purchasers therefrom, can not be regarded as a violation of its, or his contract with the State, in view of the acceptance of the provisions of the act of 1865." * * * "We are, therefore, of the opinion that the Common Council of the City of Chicago had the right to direct its Superintendent of Public Works to remove the toll gate in question. The decree of the Superior Court is affirmed."

ASSIGNMENT OF ERRORS.

In the record and proceedings aforesaid there is manifest error in this, to-wit: The judgment herein of the Supreme Court of the State of Illinois affirming the decree of the Superior Court of Cook County, Illinois, is erroneous because:

1st. The act of the General Assembly of the State of Illinois providing for the annexation of territory to cities, etc., approved and in force April 25, 1889, and the twelfth section of the act of the said General Assembly to revise the law in relation to toll roads approved March 25, 1874, and the city ordinance under which the Commissioner of Public Works acted, as construed by the said Supreme Court and applied to and enforced against the vested chartered and contract rights of the said plaintiffs in error, are, and each of them is, in violation of that part of section ten of article one of the Constitution of the United States prohibiting any State from passing any law impairing the

obligations of contracts, and also in violation of that part of section one of the fourteenth amendment of said Constitution prohibiting any State from making or enforcing any law which will deprive any person of property without due process of law. Said judgment of said Supreme Court should therefore have reversed said decree of said Superior Court as erroneous and contrary to law and equity.

2d. The said decree of said Superior Court of Cook County and the said judgment of said Supreme Court are erroneous because based upon statutes enacted by the General Assembly of the State of Illinois and an ordinance of the City of Chicago, which are, and each of them is, in violation of the Constitution of the United States and therefore null and void.

And that said plaintiffs in error therefore pray that the said judgment of said Supreme Court of the State of Illinois be reversed, etc., by this court.

Argument.

I.

As to the jurisdiction of this court to review the judgment of the Supreme Court of Illinois.

That clause of the second section of the act of Congress of 1867 which confers jurisdiction in all causes "where is drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity," seems to be the one specially applicable to the case at bar.

Of course, it must appear from the record—or rather, it must be fairly inferrable from the record, that in the determination of the cause in the State Supreme Court there was drawn in question the validity of the State statute or of an assumed State authority, and that such validity was challenged by the plaintiff in error on grounds of repugnancy to guaranties afforded by the Federal Constitution, and that their validity was sustained by the court. But

this court has repeatedly held that it is not essential that the Federal Constitution, or any particular clause or section, was, in terms, invoked by the plaintiffs in error in the court below. In the language of Mr. Justice Strong in *Murray* v. *Charleston*, 6 Otto, 432–449:

"The true test is not whether the record exhibits an express statement that a federal question was presented, but whether such a question was decided, and decided adversely to the federal right."

In that case, as in this, the city assumed to exercise State authority in the form of a city ordinance passed in the exercise of its delegated legislative power, and which, if enforced, would interfere with the contract rights of the plaintiff in error, and the court below sustained this assumption of authority. The plaintiff in error did not in that case in terms invoke the Federal Constitution, but did invoke protection to his vested contract right but which were denied to him by the court below; and this court entertained jurisdiction and reversed the judgment of the Supreme Court of South Carolina on the ground that by its decision the State court necessarily denied to the plaintiff in error the guaranty found in the Constitution of the United States, which declares that no State shall make or enforce any law impairing the obligation of contracts. So, in the case at bar, the plaintiffs in error claim a State grant—a State executed contract—to keep and maintain the toll house and gate in question, and allege that the defendants claiming to act under State legislative authority threaten to remove and abate the same "in usurpation and direct violation and disregard of their vested rights" in the premises. But the State Supreme Court decided that the threatened action of the city authorities is not usurpation, or in violation or disregard of the vested contract rights of the plaintiffs in error; but is justifiable on the ground that the city limits, having been extended under the act of 1889, rendering the twelfth section of the act of 1874 applicable, and therefore authorizing the enforcement of the city ordinance under which the city assumed and threatened to act; and that the

plaintiffs in error possessed no contract rights from the State which this threatened action by the city would impair. Thus did the State Court by its adjudication necessarily deny to the plaintiffs in error the protection afforded by guaranties in the Federal Constitution.

Bridge Proprietors v. *Hoboken Co.*, 1 Wall. 116, was a case in chancery determined upon bill and answer followed by a decree dismissing the bill. The bill set up and claimed a contract from the State under an act passed in 1790, granting the exclusive right to toll bridges, and charged that the defendants were infringing upon these contract rights, claiming authority under a subsequent act passed in 1860. Not only did the record fail to show that the plaintiffs in error expressly claimed under the Constitution of the United States, but there was no allusion or reference to it in any part of the record; and the defendants in error objected to the jurisdiction on this ground, but the objection was overruled on the ground that by the decision dismissing the bill the validity of the act of 1860 was necessarily drawn in question.

Furman v. *Nichols*, 8 Wallace, 44, was a petition by the plaintiff in error for a *mandamus* to compel a county clerk to receive in payment of taxes bills of the bank of Tennessee at par; the petitioner claiming that there existed a State contract to that effect. On demurrer the Supreme Court of Tennessee dismissed the petition. No allusion was made to the Constitution of the United States in the petition. The jurisdiction of this court was challenged on this ground, but the objection was overruled and jurisdiction assumed, this court saying:

"If the record shows either by express averment or by clear and necessary intendment that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach without applying it to the case in hand, then the jurisdiction of the court attaches. And it need not appear that the State court erred in its judgment, it is sufficient to confer jurisdiction that the question was in the case, was decided ad-

versely to the plaintiff in error, and that the court was induced by it to make the judgment which it did. * * * The proceeding was an effort on the part of the plaintiff in error to test the question of the authority of a public officer of the State exercising authority under the State. * * * The purpose of the petition, the issue which it presented and sought to have determined, was as plain to be seen as if the words of the particular constitutional provision relied on had been inserted in it, and the obnoxious legislation spread out at length. All courts take notice without pleading of the Constitution of the United States and of the public laws of the State where they are exercising their functions."

In *Turnpike Co.* v. *The People*, 6 Otto, 63, the question arose and was determined upon the pleadings. It was a *quo warranto* to determine the right of the Turnpike Company to maintain a toll gate within the corporate limits of East St. Louis. The plaintiffs in error claimed the vested right under its charter and amendments, to the maintenance of the toll gate in question. The Supreme Court of Illinois decided the question against the turnpike company and the record was taken to this court by writ of error. The plaintiff in error did not in the court below, in terms, either generally or specifically, claim under the Constitution of the United States, and no allusion is made to this instrument in the opinion of the State Supreme Court. (See 82 Ill. Reps. 174.) But as the record showed that this claim of vested right depended upon the construction of the company's charter and amendments, as against a subsequent act chartering the city of East St. Louis, this court did not hesitate to assume jurisdiction to review, and did review, the judgment of the State court.

II.

Upon this jurisdictional question it is immaterial upon what grounds the State Supreme Court placed its decision denying to the plaintiffs in error their claim of right to maintain the toll house and gate in question, whether on the ground that the plaintiffs in error possessed no vested contract

rights whatever, or whether they held such rights subject to their modification or destruction by authority of subsequent State legislation. It is for this court to determine, what, if any, vested contract rights derived from the State of Illinois, the plaintiffs in error held. And in doing so this court will place its own construction upon legislative acts and upon contracts and conveyances. This is the settled law of this court so familiar that it is perhaps unnecessary to even refer to cases. But we will refer under this head to the following:

Bank v. *Skelly*, 1 Black, 436–450.
The Northwestern University v. *The People*, 9 Otto, 309.

In the former case the State court decided that the plaintiffs in error held no contract whatever within the meaning of the Federal Constitution which provides "That no State shall pass any law impairing the obligation of contracts," and this court reviewed and reversed this ruling holding that the plaintiffs in error did hold such a contract. And in the latter case the State court held that the plaintiffs in error held no contract of exemption from taxation for the reason that the Constitution of Illinois prohibited such exemption; but this court reviewed and reversed this ruling giving its own construction to the Constitution of Illinois. So in the case at bar. The learned judge in his opinion undertakes to construe the 3d, 4th, and 5th sections of the amendatory act of 1865 as only authorizing the Northwestern Plank Road Company to sell and convey to Snell a life interest in its franchise, and therefore the plaintiffs in error, as his legal representatives, could acquire no interest in this franchise, and consequently hold no contract derived from the State which the Constitution of the United States protects. Clearly this court should review this ruling and place its own construction upon these sections of this act for the purpose of ascertaining what contract rights the plaintiffs in error hold. Generally, in this class of cases, the State courts deny the relief on the ground that the plaintiff in error holds no contract which is protected by the Federal Constitution. Such was the Dartmouth College case.

III.

The case at bar should not be confounded with cases arising in trials at law on bills of exceptions to the rulings of the trial court, and under another distinct and independent clause of this second section of the act of 1867, as follows:

"Or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority (the final judgment or decree), may be re-examined and reversed or affirmed by the Supreme Court of the United States upon writ of error."

Both the phraseology and purposes of these two clauses are wholly distinct. In the one case jurisdiction attaches where is drawn in question the validity of a State statute or State authority on the ground that it is repugnant to the Federal Constitution. In the other case, the party basing his original claim of right directly upon a provision of the Federal Constitution he must "specially set up or claim" under the instrument which constitutes the only basis or foundation for the right claimed; and if he fails to ask the trial court to rule upon the question, he can not assign error upon a ruling which the court did not, in fact, make, and which it was not even requested to make. Such were the cases of *ex parte Spies*, 123 U. S. 131–32, and *Bank* v. *Missouri*, 124 U. S. 394.

The case at bar arises upon a record in an equity cause, wherein complainants' right and title are based wholly upon a State charter, a State franchise, a State contract. And there is clearly drawn in question upon this record the validity of subsequent State statutes and authority impairing the obligation of this contract, and to enforce which would wholly subvert and destroy these vested rights held by the plaintiffs in error. No bill of exceptions was in order, and

no request for specific rulings at the trial was required to preserve complainants' rights.

IV.

Assuming that this court will conclude it has jurisdiction to review the judgment of the Supreme Court of Illinois, we will proceed, as briefly as the case warrants, to discuss the question as to whether that court erred in its judgment affirming the judgment of the Superior Court. And

1st. If a subsequent general law, or city ordinance, when enforced against a franchise or charter held under a special act, would substantially impair rights held thereunder, it is, *quoad hoc*, as much unconstitutional and void, as impairing the obligations of a contract, as would be a subsequent special act repealing such franchise or charter altogether.

Northwestern University v. *People*, *supra*.

2d. On the assumption that the language of the 2d section of the amendatory act of 1865 is broad enough to subject the Northwestern Plank Road Company to all the provisions and restrictions of the general plank road law (which we deny), it was only the general law then existing which must control. It is by reference that any or all of the provisions of this general law are adopted by this 2d section. But it is the same as though this law, as it then existed, had been inserted at length into this amendatory act. And so the rule is stated by the Supreme Court of Illinois in *Turney* v. *Welton*, 36 Ill. 393, where that court say: "The act of 1847 should be construed as if the provisions of the act of 1845, so far as applicable, were incorporated into itself. Whenever an act of the Legislature confers powers which are recited in another act, the act to which reference is made is to be considered and treated as if it were incorporated into and made part of the act which contains the reference." Nor is this a new rule peculiar to Illinois. It is elementary.

See Sedgwick on Statutory Construction, 2d Ed. (note), page 229.

After the then existing general law had been thus ingrafted into the charter of the plank road company by way of amendment, and the amendment was accepted by the company, a repeal of this general law would not eliminate its provisions from this charter or relieve the company from its restrictions or obligations. See *Spring Works* v. *San Francisco*, 22 Cal. Repts. 434.

The language of this second section is not ambiguous in this regard. It speaks of "*the* general plank road law." It authorizes the company to collect the same penalties and damages "that is authorized by *said* law" and subjects it to the same penalties for abuse of travelers, etc., "*that* law imposes." To read this section as though it in terms not only subjected this company to all the restrictions and obligations imposed by the general law then existing, but to any modifications, changes or additions which the General Assembly might thereafter choose to make, is not interpretation but mere interpolation. There could be no better illustration of the absurdity of such a claim than this case itself presents. Nine years after the acceptance of this amendment the Legislature for the first time sees fit to prohibit the erection or maintenance of any toll gate or the demanding of toll, within the limits of any city, and fourteen years still later the Legislature proceeds to so extend the city limits as to engulf this entire toll road, thus, in effect, confiscating the entire franchises and property of this company. And yet we are told that by accepting this amendment of 1865, this plank road company intended to commit such a legal *hara-kiri* as this. This somewhat singular conclusion seems to have been arrived at by the learned judge who delivered the opinion in the court below, upon some general, if not vague notions of public policy—or rather a consideration of what the General Assembly might or should have done rather than ascertaining what it, in fact, did do; and invoking the conceded rule that legislative grants should be strictly construed against the company and in favor of the public. But for the true interpretation of this rule we

need only quote the language of this court in *Home of the Friendless* v. *Rouse*, 8 Wall. 430, as follows:

"It is true that legislative contracts are to be construed most favorable to the State, if on a fair consideration to be given to the charter any reasonable doubt arise as to their proper interpretation; but as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears upon reading the instrument, it is as much the duty of the court to uphold and sustain it as if it were a contract between private persons."

3d. The general plank road law existing at the time of the passage and acceptance of the amendatory act of 1865 will be found compiled as chapter 82 in Gross' Compilation, Ed. of 1871, at page 494. It contained no prohibition against maintaining toll gates within the corporate limits of cities but expressly authorized them. Nor does the original charter of the Northwestern Plank Road Company, or the general law thus ingrafted into this charter by the amendatory act of 1865, reserve to the State the right to alter or amend.

Litigations arose in the State of Michigan in which the Supreme Court of that State decided the questions now presented under this head. In *Detroit* v. *Detroit E. P. R. Co.*, 12 Mich. 333, the court held that where a plank road company under its charter had rightfully located a toll gate outside of the city limits, a subsequent extension of the limits did not operate to oust the company from such right, as the limits established at the date of the charter must govern. In *Detroit* v. *Detroit & Howell P. R. Co.*, 37 Mich. 195, after full consideration the court again decided this question re-affirming the rule as above, saying: "The State could not have designed that as fast as it might enlarge the city boundaries the defendant's franchise covering the right to place toll gates should be correspondingly annihilated, and the gates themselves thereby brought within the limits, be instantly converted into a public nuisance."

It seems that these persistent efforts to confiscate the prop-

erty of these plank road companies did not stop here. Like many other companies, the Detroit & Howell Plank Road Company held under a special charter passed in 1848; but which in terms subjected the company to the general plank road law of the State; and also provided that its charter mi ht be altered or amended at any time after thirty years. In 1853 the Legislature amended several sections of the general plank road law and added several new sections, one of which declaring that any company organized subject to its provisions should also be bound by all amendments assented to by such company by certificate to that effect filed in the office of Secretary of State. The Detroit & Howell P. R. Co. filed their assent to these amendments. In 1879 (the thirty years having expired), the Legislature again amended this plank road law by adding a section providing that no plank road company organized subject to the general law should keep or maintain any toll gate or collect any toll within the then present or future limits of any city or village.

Armed with this sweeping amendment, the city of Detroit applied for a *mandamus* to compel this company to remove beyond the city limits a toll gate located at Grand street in said city. But the *mandamus* was refused on the ground that this amendment of 1879 as applied to this company was unconstitutional and void, because, in effect, it was not a legitimate amendment but rather a statute to confiscate property. In delivering the opinion of the court, Chief Justice Cooley, after a careful review of the authorities, says: "What the State claims the right to do is to deprive the respondent of the privilege any longer to take tolls for travel on two miles and a half of its road. If it may do this in respect to one part of the road, it may in respect to any other part. If it may exclude the respondents from Detroit it may from Howell also, or from any other township on the line, and a single section of a statute may annihilate the property of respondent altogether. A statute which could have this effect would not be a statute to amend

franchises, but a statute to confiscate property; it would not be a statute of regulation but of spoliation."

If, therefore, under the guise of interpretation it be held not only that the language of the second section of the amendatory act of 1865 is broad enough to subject the Northwestern Plank Road Company to all the restrictions and obligations of the general plank road law as it then existed, but that a fair and reasonable construction demands an interpolation of additional words also subjecting this company to any future alterations or amendments which the Legislature may choose to make, still such language should not be regarded as warranting such a radical change as in effect to destroy or confiscate property rightfully acquired.

3d. It is said in this opinion that "The act of 1865 evidently intended to put the Northwestern Plank Road Company upon the same footing with plank roads organized under the general law of the State." Were this conceded, could it be contended that the general law as it existed at the time of such organization would not furnish the measure of the powers, rights, restrictions and obligations of such company? Suppose such company had acquired from the city and county authorities under the 66th section of this law, the right to locate and construct its road from some point within the city limits to some outside terminus in the county and had actually constructed the same, placing a toll gate within these limits; could the Legislature by subsequently amending this general law oust the company from the use and maintenance of a gate thus rightfully located and constructed?

V.

What is said in this opinion about this franchise dying with the death of Snell is susceptible of a ready and easy answer. This opinion concedes, as it must, that in the hands of the plank road company this franchise is perpetual. If we turn to the statute authorizing its sale, we find the language broad and unambiguous. It provides that the

president by direction of the stockholders may sell "the franchise, the property and immunities of said company," and it declares that "the purchaser or purchasers of said franchise" shall be bound by all the obligations "and shall enjoy all the rights and privileges enjoyed by said company." This language is too plain and explicit for interpretation; besides the idea that the Legislature intended to authorize the sale only of a life interest in this franchise, leaving the reversion or remainder to die with the dissolution of the corporation seems preposterous. The express object of the sale is "to dissolve the company and to divide the avails among the stockholders." Snell paid $20,000 for this property. If the company was only authorized to offer a life interest probably no purchasers could have been found at the price of twenty cents. If some occult intention is to be spelled out by the analogies of the common law relating to real estate tenures and conveyances, we find this singular result: the reversion or remainder extinct and the life estate surviving; the roots and trunk of the tree dead, and the branches flourishing like "a green bay tree."

Turnpike Company v. *Illinois*, 96 U. S. 63, cited by the learned judge, does not support his position. In that case this court held that a grant by the Legislature of additional franchise to a corporation having a limited existence by the express terms of its charter, should be construed as a grant to continue only during the life of the corporation itself. And how could it be otherwise? How could a corporation hold and enjoy a franchise after it had itself expired? But here a corporation having perpetual existence, and confessedly holding a perpetual franchise under legislative authority, sold and conveyed the same to "Snell, his heirs, executors and assigns to have and to hold unto the said Amos J. Snell, his heirs, executors, administrators and assigns forever."

Nevertheless, we are told that somehow only an estate in this franchise during the life of Snell was conveyed.

The examination by the learned judge of the distinction between a franchise to be a corporation which belongs to the corporators, and the franchise belonging to the corporation

itself after its organization, seems wholly gratuitous. We never claimed that Snell purchased the franchise to be a corporation, but only the franchise and property of the corporation. Besides, the statute itself only authorized the sale of "the franchise, the property and immunities of said company." Nor was it necessary for Snell to purchase the franchise to be a corporation, or to organize a new corporation in order to hold and enjoy this franchise to its full extent, and so it was expressly held by this court in *Memphis R. R. Co.* v. *Commissioners*, 112 U. S. 609, cited in the opinion. This court say:

"The franchise of being a corporation need not be implied as necessary to secure to the mortgage bondholders or the purchasers at the foreclosure sale the substantial rights intended to be secured. They acquired the ownership of the railroad and the property incident to it, and the franchise of maintaining and operating it as such, and the corporate existence is not necessary to its use and enjoyment. All the franchises necessary or important to the beneficial use of the railroad could as well be exercised by natural persons. The essential properties of corporate existence are quite distinct from the franchises of the corporation. The franchise of being a corporation belongs to the corporators, while the powers and privileges vested in and to be exercised by the corporate body as such, are the franchises of the corporation."

It is this latter separate and distinct interest or franchise which Snell purchased, and he purchased the whole of it if plain language is to have force and natural significance in a court of justice. And if he did purchase the whole of it, there should be no doubt that under the statute of Illinois at his death it descended to his heirs and legal representatives. In and of itself this franchise is in perpetuity. It is not limited to any term of years. It was a vested right in Snell. It was to all intents and purposes property. It was property resting in an irrevocably executed contract. It was property resting in grant from the State, and valuable property for which Snell paid

a large sum of money. It was property which could be condemned and taken for public use by the exercise of the right of eminent domain.

West River Bridge Co. v. *Dix*, 6 How. U. S. 507.
Sec. 14 of Art. 11 of Constitution of Ill. of 1870.
Sec. 24, Chap. 138, Ill. Revised Statutes.
2 Morawetz an Corporations, Sec. 1086 *et seq.*

Cooley's Constitutional Limitations, marg. page 281.

It is, therefore, absurd to say that this valuable franchise did not constitute a part of the estate of Snell. The statute of the State of Illinois provides "that estates both real and personal" of the person dying intestate, "shall descend to and be distributed in manner" pointed out, etc. (Sec. 1, Chap. 39, Ill. Revised Statutes.) The word "estate" used in such connection is of the broadest signification. "It embraces everything of which riches or fortune may consist." (Bouvier's Law Dic., Vol. 1, page 605, and cases there cited.)

Besides, upon general principles of the common law, this franchise is an inheritable property or estate. It is an incorporeal hereditament. The very term "hereditament" implies its inheritable quality. Anything "capable of being inherited, be it corporeal or incorporeal" is an hereditament. 1 Bouvier's Law Dic. page 748. "An hereditament" says Sir Edward Coke, "is by much the largest and most comprehensive expression; for it includes not only lands and tenements, but whatever may be inherited, be it corporeal or incorporeal." Blackstone's Com., Book 2, marg. page 17.

And this learned commentator defines franchises of this character as incorporeal hereditaments, and he instances among these, the right of taking toll either at public markets "or at any other public places as at bridges, wharves or the like." And he declares that these franchises "may be vested either in natural persons or bodies, politic, in *one man or in many.*"

2 Blackstone's Com., Chap. 3, marg. pages 20, 37 and 38.

Even the right of visitation vested in the founder of an

eleemosynary corporation descends to his heirs upon his death.

Dartmouth College v. *Woodard*, 4 Wheaton, 509.

If, therefore, a franchise like this be held by a corporation aggregate, it goes to its successors. If held by a natural person, upon his death it constitutes a part of his inheritable estate.

VI.

We find in this opinion, if not a decision, at least a *quære* whether under the case made by the bill, the sale to Snell was not absolutely void because the power to make it is conditioned upon the failure of the county to purchase and the bill does not show such failure. We quote from the opinion as follows:

"Section 4 of the act of 1865 provides that the supervisors of Cook county may purchase said franchise, property and immunities, and should the county fail to purchase the same any person or persons may purchase the same and thereby make the same private property. Evidently the design of the act was to give the county the right in the first place to obtain a surrender to itself of the privileges granted to the company. The right of other parties to purchase would seem to have been conditioned upon the failure of the county to do so. There is, however, no allegation in the bill that the county authorities were ever informed of the resolution of January 5, 1866, or were ever given an opportunity of making the purchase referred to in section 4. The only averment upon that subject is that the county did not purchase, but the county supervisors certainly could not be said to have failed to have purchase until they were in some way made aware of the action of the stockholders, because such action was a necessary prerequisite to the right of the corporation to sell. But if it be admitted that the company had authority to make the sale, which it did make to Snell, the question arises what effect did such sale have?" etc.

The 3d section of the act of 1865 in general terms author-

izes the company to sell to the county of Cook "or to any other party or parties." The 4th section enacts that the Board of Supervisors "may purchase" and "upon the order of said board the clerk of said county shall proceed to purchase and receive a deed of title to the same, and should said county fail to purchase the same, any person or persons may purchase the same and thereby make the same private property." The 19th section of the charter of the said Southwestern Plank Road Company, which, as we have seen, was engrafted into and became a part of the charter of the Northwestern Plank Road Company, is as follows: "This act is hereby declared a public act and shall have effect from and after its passage." So that the charter of the latter company is a public act of which all parties, as well as the courts, must take notice and of course as an amendment of a public law the act of 1865 is also a public act. In the language of the Supreme Court of Illinois in *Holbrook* v. *Nichol*, 36 Ill. 161–167: "This being an amendment of a former act it operated precisely as if" (the amendment) "had been added to the prior act at the time of its adoption."

As soon as this act was passed the Board of Supervisors were therefore bound to take notice that the company were authorized to sell, and if you please, that the county was given the preference of the right to purchase. And if these supervisors desired to purchase, if they deemed it for the interests of the county and the public that they should do so, was it not their duty, within a reasonable time, to put their clerk in motion, when it would have been the plain duty of that officer to "proceed to purchase and receive the deed of title to the same?"

But from February 16, 1865, the date of the approval of this amendatory act to August, 5, 1870, the date of Snell's purchase—five years and a half—and from January 5, 1866, the date of the stockholders' resolution to sell—four years and eight months—no steps were taken, nothing whatever was done by the county. The bill avers that the county did not purchase, but that Snell, "in accordance with and in pursuance of said act," did purchase and thereupon until

his death, (February, 1888, nearly eighteen years), "was the sole owner thereof, in the actual and exclusive possession, control and enjoyment thereof, and the undisturbed exercise of all the franchises, rights and powers which were conferred upon said corporation by said enactment." If the county had made an effort to purchase, its officers would have learned that the company had resolved to sell, and nothing would have remained but to agree on a price, but instead, the county for over eighteen years have acquiesced in the open possession of this toll road and the enjoyment of this franchise by Snell under his purchase. Where two parties are authorized to deal, the one to purchase and the other to sell, upon what principle can it be claimed that it is not as much the duty of the purchaser to proceed with an effort to purchase as of the seller with an effort to sell? To hold that under this statute the power to sell to Snell was conditioned upon first giving specific notice to the county of this resolution to sell, is to engraft a specific and important condition neither in terms nor by reasonable intendment to be found in it. But in any view such a condition would be for the benefit of the county and could and would be waived by its long acquiescence in this sale to Snell.

If this sale had been made before the county had an opportunity to purchase, doubtless it could have obtained redress by a prompt application to set aside the sale. But even then the sale would not be so absolutely void for want of power that it could be collaterally attacked. However this may be, it is idle to pretend that under the case made by this bill this sale can thus be collaterally attacked.

VII.

This opinion places a construction upon this charter of the Northwestern Plank Road Company, which in a substantial degree nullifies this franchise by denying to the company before the sale, and as a consequence to Snell after his purchase, any power to erect and maintain any toll gates in addition to what were originally and years ago

erected, however necessary and proper for the collection of the tolls such additional gates may be. The language of this charter in this regard is exceedingly broad. It declares that this "corporation is authorized and shall have power to erect and maintain such toll houses, toll gates and other buildings for the accommodation and management of said road and the travel and transportation thereon as the said corporation may deem suitable to its interests and may demand, collect or receive of and from any and every person using said road or so much thereof as may be completed" toll, not exceeding certain rates per mile. The bill sets forth this charter and avers that Snell after his purchase and long prior to the extension of the city limits erected the toll house and gate in question for the accommodation and management of said toll road and the travel and transportation thereon. That he deemed the same suitable to his interests. That they were and are, in fact, suitable and necessary, and without them large sums in tolls would be lost by travelers shunning other toll gates by turning from said toll road upon Fullerton avenue, etc. That to secure his just tolls Snell erected the same. By the general demurrer to the bill all this stands admitted; and yet the learned judge who delivered this opinion seemed to think that the bill makes no case showing authority in the company or in Snell to erect and maintain the toll house and gate in question, on the ground that the company had exhausted its power to erect and maintain gates before Snell purchased. How many gates had been erected by the company and where located does not appear. The charter in express terms conferred upon this company power to erect and maintain toll houses and toll gates without limit as to number and localities; such in numbers and location as it might deem suitable to its interests. If the English language is capable of conferring general and unlimited power it has been done by the language employed in this charter. It would be singular, indeed, if authority could be found either in the judgments of high courts or in text books where the doctrine of exhaustion of power had been applied

to power conferred in such broad and unlimited terms. This doctrine has application only to cases where power is conferred in limited and specific terms.

In the *Cheshire Turnpike* v. *Stevens*, 10 N. H. 133, it was contended by the counsel that the company, having erected and fixed two gates in 1808, its power on this subject was exhausted, and therefore an additional gate erected in 1810 and having its location changed in 1823, was *ultra vires*. In that case the charter of the company authorized the erection "of so many gates or turnpikes upon and across said road, as may be necessary to collect their tolls," and the court say, "the object was to give the corporators the means of securing toll for all the travel on their road, and if the gates first erected were found inadequate for the purpose, they had the right to increase the number until the object was attained. As the means of evading the toll were multiplied the corporation were at liberty to adopt additional measures to secure it. In the outset it must often happen that the necessary number and location of gates can not be foreseen, and to preclude the corporation from adopting such measures in future, as might be required to secure the profits of the road to which they were justly entitled, would in some cases prove destructive to its interests."

To the same effect are the cases of *Fowler* v. *Bratt*, 11 Vermont, 369, and *Detroit* v. *Plank Road*, 12 Mich. 333, *supra*. These cases were cited by counsel for these complainants, but were apparently overlooked by the learned judge who prepared this opinion, and the authorities he cites by no means sustain the construction which he puts upon this charter.

In the case cited from the 18th of Johnson, the charter directed that the most easterly gate should be placed near the Massachusetts line; years after it had been placed it was removed to a point 2¾ miles from this line, and the court were clearly of the opinion that it was not near the line within the meaning of the charter and were also inclined to the opinion that after it was once placed the company could not capriciously change its location, and could not do so

without some strong and manifest necessity to warrant it. The two Connecticut cases were the same in principle. In the one case the charter authorized the company to "erect and establish" one turnpike (gate), and in the other to "erect and establish two gates." The company having in each case established its gate or gates the court held that its power in this regard was exhausted, so that it could not afterward remove the gates to different locations. The Massachusetts case is still less to the purpose. There the company was authorized to locate a gate under the direction of a committee. The gate, having been thus located, the company undertook to change its location *nolens volens* without leave from the court as provided by statute. If we turn to section 360 of Angell on Highways (also cited) we find the rule announced precisely as we claim. After alluding to the principle announced in the foregoing cases, the learned author proceeds as follows: "But a company having by its charter authority to erect so many gates or turnpikes as may be necessary to collect their tolls, may increase the number of gates originally established and change their situation from time to time, provided the gates are not placed in any situation prohibited by the charter." The question decided in *The People* v. *L. & N. R. R. Co.*, 120 Ill. 48, also cited, is well stated in the head note. It is this:

"After having once fixed the terminal points of its road, and located its depot in a town or city, a railway company has no power to change the same without legislative authority, but it will be held to its election." But its bearing upon the question in hand is not easily perceived. Where a railroad company has once located its route and fixed its termini, and constructed its road and terminal depots accordingly, of course it can not change either, but if the company has general power to locate depots along the line of its road, wherever it shall deem it for the interest of its business to do so, can any case be found which holds that when such a company has located one or more depots its power of location is exhausted and therefore it can not locate others however necessary for the accommodation of its business? If

we turn to the case of *C., B. & Q. R. R. Co.* v. *Isaac G. Wilson*, 17 Ill. 123, we shall find the principle for which we here contend adjudged by the Supreme Court of Illinois. In that case the company was authorized by its charter to construct a railroad on a prescribed route, "with such appendages as may be deemed necessary for the convenient use of the same," and to acquire the necessary land for its purposes by exercise of the power of eminent domain or purchase. The company having acquired land by condemnation for the purpose of, and having completed and was running its road, it was claimed that its power to further condemn land, either for track, depots or other appendages was exhausted; but the court decided otherwise, holding that such a construction of its powers would be unreasonable and might prove disastrous, as it would be impossible to determine in the first instance how much land might be required in the future to meet the exigencies of the company's business.

VIII.

Considerable space is occupied in this opinion in an effort to maintain these two propositions:

1. If at the date of the sale to Snell all of the Northwestern plank road had been completed and was in use to the north line of Cook county, then this sale can not be sustained, because on its face it only purports to convey that portion of the franchise relating to, and that portion of the plank road itself, "from the old city limits of Chicago to the nine mile post." And as the act of 1865 only authorized the sale of the whole of this franchise and property any attempted sale of a part would be nugatory.

2. If, at the time Snell purchased, the road was only completed and in operation to this nine mile post, it became his duty to proceed with reasonable diligence to its completion; and his failure to do this, his negligence in this regard, *ipso facto*, ousted him from all right to this franchise and property.

This bill relates to that part of the toll road over which the city can claim to exercise any power or jurisdiction

whatever, namely, six miles being the distance from the old to the extended city limits, and as to this portion the allegations of the bill are full and complete. And is it material to inquire or, rather, indulge in surmise, as to what may or may not have become of the part outside of these limits?

It required an enabling act to authorize the company to sell its franchise, but none to authorize it to sell its visible property, such as plank, toll houses, toll gates, etc. The deed to Snell in express terms conveys the charter and its amendments and all the franchises of the company, "together with all the property, goods and chattels of said company, of whatever nature or description." If, therefore, as a ground for defeating this sale, we were to presume without either proof or allegation that at the time of this sale the plank had been laid and toll houses and gates erected beyond the nine mile post, there would be nothing upon which to base an assertion or supposition that this conveyance was an attempt to divide the franchise, by selling only a part, and therefore inoperative.

But, as this opinion concludes, in view of the language of this conveyance, together with the allegations of the bill, that the plank road itself with its appurtenances had not at the time been completed beyond the nine mile post, it becomes more pertinent to inquire how the case stands upon this assumption.

In the first place, it would be a mistake to assume that the original charter imposed a positive obligation to construct a plank road the entire distance to the north line of the county. Certainly no such obligation was imposed as a condition precedent to the right to exercise its franchise and demand tolls. The first section creates the corporation in general and unqualified terms, at the same time reciting that the corporators had obtained a license from the county to construct a plank road from the city to Oak Ridge, thence to Wheeling and the north line of the county. It prescribes the method of obtaining right of way over private property, authorizes construction of lateral branches, etc., and

in express terms authorizes the company to "demand, collect or receive tolls" upon its road, "*or so much thereof as may be completed*," at not exceeding certain rates per mile. Indeed, the opinion substantially concedes this much, but says this did not relieve the company, and, subsequently, Snell, from the duty to complete the road to the county line, within a reasonable time. Upon well settled principles, negligence in this regard would not *ipso facto* forfeit the franchise, but would, at most, constitute only cause of forfeiture, by judgment of court, on a direct proceeding by the State by *quo warranto*. Or the State may waive the forfeiture, either expressly or by legislative act recognizing the continued existence of the corporation. This is familiar law, nowhere more frequently declared than by the Supreme Court of Illinois. See

Jameson v. *The People*, 16 Ill. 257.
People v. *Farnham*, 35 Ill. 562.
McAuley v. *C., C. & I. R. R. Co.*, 83 Ill. 348.
People v. *Hydraulic Co.*, 115 Ill. 281.

See also, *People* v. *Manhattan Co.*, 9 Wend. 351.
In Re Elevated Road, 70 N. Y. 327-338.

If there had existed a cause of forfeiture against the company, such was the effect of this amendatory act of 1865; it operated as a waiver of any cause of forfeiture, had any existed. By its very title this act expressly recognizes and affirms the existence of this corporation and its ownership of a valid and valuable franchise upon Milwaukee avenue.

It is an act not only to amend the charter, but also to authorize a sale of the franchise. Why authorize this company to sell its franchise, if it possessed no franchise of value? Why amend its charter if it possessed no valid charter? It authorized the company "to substitute stone or gravel in place of plank upon said road or any part thereof." In place of what plank and upon what road we ask? Obviously the plank, constituting the plank road bed upon Milwaukee avenue. It prescribed and changed the rate of tolls, etc.

As to any charge of negligence on the part of Snell in not

completing this road after his purchase, the answer is conclusive. If this amendment placed this company upon the same footing with companies organized under the general law, then existing, failure thereafter to complete the road for the entire distance would not constitute even a cause of forfeiture. Section 42 of Gross' Compilation of the general laws, then existing, reads as follows:

"Any company that shall have been or may hereafter be formed under the law to which this is an amendment, may build so much of the road contemplated in their organization, as may be for the interest of the company or for the traveling public, being not less than one mile in all, and shall be entitled to all the rights and privileges, upon the finished portion of said road, which are granted by the general plank road law and its amendments, for the full term of their organization. Provided, however, that such portions of the road so contemplated as may be unfinished after the lapse of five years from the organization of said company, may be vacated; or if at any time after the formation of any company, any other plank road company shall propose to organize for the construction of any unfinished portion of any company's road, it shall be lawful for the company having control of such road to surrender such unfinished portion of said road, contemplated by their organization to the said newly formed company, by filing such surrender in the county clerk's office in the county wherein said road may be situated."

Section 47 of the same compilation reads as follows:

"The provisions of this act, and all amendments to which this is amendatory, shall apply to all plank road companies, whether formed under the general plank road law, or whether incorporated under special acts or otherwise, so far as the same may not impair the provisions of special acts of incorporation."

These sections were overlooked by the judge who prepared this opinion.

IX.

This opinion questions the power of the General Assembly to grant the original charter of this company, on the ground that this charter "contravenes the spirit, if not the letter, of Sec. 5 of Art. 9 of the Constitution of 1848," which is as follows:

"The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property within the limits of municipal corporations, belonging to individuals, shall be taxed for the payment of debts contracted under authority of law." The opinion proceeds to say that the exacting of tolls from travelers upon toll roads is in the nature of a municipal tax, and therefore the exercise of this franchise interferes with the taxing power of the city of Chicago, which, by this clause of the Constitution, is vested exclusively in this municipality. To assert that the exacting of toll, from those who may choose to travel upon a toll road is a tax, within the meaning of this or any other known constitutional provision, is, to say the least, something of a novelty. It has long been understood, both by the profession and the courts, that tolls are but equivalents for the privilege of traveling upon a road, improved and continued in order, at the expense of the toll road company demanding the toll, and upon this ground this class of corporations have been sustained for centuries by the courts of England and this country. However, if regarded as a tax, then this law of 1889, by authority of which this toll road was brought within the jurisdiction of the city and of its taxing power, is *quoad hoc* unconstitutional and void, as impairing the taxing power of this toll road company under its previous grant or contract with the State. And as Sec. 17, of Art. 13 of this same Constitution of 1848 declares that "No *ex post facto* law, nor any law impairing the obligation of contracts shall ever be made," it would seem that it is this act of 1889, in-

stead of this charter, which is in conflict with both the spirit and the letter of the Constitution of 1848.

X.

There is more of this somewhat lengthy opinion, which, though embracing many incorrect assertions and unjustifiable conclusions, we shall forbear to notice in detail. For instance, that part of the opinion which is aimed at illustrating the incompatibility between operating a toll road in the streets of an incorporated and populous city, and the proper and convenient use of these streets, and the exercise of municipal authority over them. No doubt this incompatibility exists, to a greater or less degree, depending upon surrounding circumstances; but the remedy does not lie in confiscation and destruction of private interests and property.

It frequently occurs that the spread of population in rapidly growing cities finds in its way things which form obstacles to the orderly and covenient exercise of municipal affairs and of municipal authority. To illustrate. Many years ago the C., B. & Q. R. R. Co. obtained the right of way and located one of its tracks near Sixteenth street from the south branch to the lake, crossing many north and south streets and avenues. When the track was thus located it was out upon the prairie, far removed from dense population. But the growth of the city has long since placed it in the heart of a densely populous city, and, operating this track, has therefore become a serious obstacle to the use of these streets and avenues, amounting to a grievous nuisance. Many remedies have been suggested, but none which include confiscation or forcible destruction or removal of these tracks. The true spirit of the law applicable to cases of this kind can nowhere be found better stated than in the concluding part of the opinion of the learned chief justice in *Detroit* v. *Detroit & Howell P. R. Co.*, 43 Mich. 149 (above cited), as follows:

"It may be that what the Legislature of 1879 proposed to accomplish would in itself work no hardship to respondent,

and would be highly desirable to the city; but the principle violated is the fundamental principle that underlies all property; and the first successful inroad upon it that obtains judicial sanction may be a precedent that shall let in innumerable evils. Courts must look beyond the particular case to the governing principle, and be governed by that, regardless of temporary and special inconveniences. But even such inconveniences must be trivial, since the power to appropriate private property to public uses is always ample and always at command."

In conclusion, with all due respect, we feel justified in the assertion that in arriving at his judgment, the learned judge who delivered the opinion in the court below, either ignored or negatived every well-settled principle of law applicable to this case; and we submit that the judgment of the Supreme Court should be reversed with directions.

Respectfully submitted,

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For plaintiffs in error.

SIDNEY SMITH,
Of counsel.

N. B.—The act chartering the Northwestern Plank Road Company, approved March 1, 1854, together with section 4 and sections 7 to 19 inclusive, which by reference and adoption are engrafted into this charter; also the amendatory act of 1865, are copied verbatim in the bill of complaint, filed in the Superior Court of Cook County. Sections 42 and 47 of the general plank road law, existing at the time of the passage of this act of 1865, are copied verbatim into this argument. And section 66 of this general law referred to herein is as follows:

"Such company may locate and construct said road or pike, or any part thereof, upon any State or county road, by an agreement with the county court, or in counties adopting the township organization, with the board of supervisors or commissioners of highways, in which said State or county road may be situated, or upon any street or

alley or public ground within the limits of any incorporate town or city, by an agreement with the corporate authorities of such town or city; which said agreement with such county board, board of supervisors, commissioners of highways, or corporate authorities, shall be in writing, and filed and recorded in the county clerk's office of the proper county; or may locate and construct such road or pike over any lands owned and occupied by the State, and over any lands owned by any individual or corporation, by voluntary cession or by purchase. It shall be lawful for such company to appropriate and use so much of said land, not exceeding 100 feet in width, as shall be necessary for the proper construction of such road or pike, on complying with the six following sections." (Gross' Stat. Ill. Ch. 82a, § 66.)

This, it is believed, is a compliance with that part of Rule 21 of this court, which provides that "when a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case, shall be printed at length."